Indiana Office of
Utility Consumer Counselor

Telecommunications in Indiana in 2005: Where We Are, How We Got Here, and Where Should We Go?

The 2005 Report

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A Message from the Indiana Utility Consumer Counselor

Most of us agree the telecommunications industry has changed dramatically in Indiana since the 1980s, and in response, the Indiana Utility Regulatory Commission (IURC) has changed the way and extent to which it exercises its regulatory authority over industry providers.

Indiana's Telecommunications Alternative Regulation Statute gave the IURC the flexibility it needed to balance regulatory goals with the need to encourage opening markets to competition. The Indiana General Assembly has clearly directed the IURC to ensure continued ubiquitous access to reliable, high quality, affordable telecommunications service while working toward a competitive environment. The Daniels Administration is encouraging the deployment of advanced broadband infrastructure and availability to better serve Indiana residents and as a tool for economic development in our state. Our ability to achieve these goals is critical to Indiana's economic strength and future promise.

Advanced technologies and inter-modal competition among providers have changed the way we communicate. But these same technologies have opened the door to new types of consumer fraud, like slamming, cramming, and modem hijacking. The IURC serves an important role in ensuring that competitors treat each other fairly and that all service providers treat Indiana consumers fairly, within the bounds of the law. It also continues to provide a forum for consumers' voices to be heard, whether through informal dispute resolution or formal proceedings.

Until competition among all providers of telecommunication services is firmly anchored in Indiana, the IURC stands as the administrative surrogate for competition, limiting the exercise of market power by dominant providers, ensuring the continued availability of affordable and reliable service, and fostering the deployment of advanced technologies and infrastructure.

The decision facing Indiana lawmakers is whether the law needs to be changed, and to what extent, in light of the changes in the telecommunications industry. Other states have moved toward a more deregulated environment, some with a mixed review of benefits for having done so. The IURC has recently presented its 2005 Telephone Report to the Regulatory Flexibility Committee of the Indiana General Assembly. A large amount of information has been made available and no doubt, more will be presented by others in the coming months.

Information is powerful. It empowers us to make good and prudent decisions independent of strong and persuasive advocacy. My goal in tasking OUCC staff to prepare this report is that as a reader, you might seize the power of the information in this report and in other reports that address similar issues, as you thoughtfully consider decisions which may impact the future of telecommunications in Indiana. On behalf of the Indiana Office of Utility Consumer Counselor, thank you for allowing us to share with you some of our thoughts and concerns as advocates for Indiana consumers.

Best regards,

Susan L. Macey
Indiana Utility Consumer Counselor
September 12, 2005

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Executive Summary

This report reviews the historical path of deregulatory efforts in Indiana, and then takes a quick look at today's telecommunications industry in Indiana. It reviews programs and obligations to assist and inform policy makers as they decide on which regulatory functions will be kept, improved, phased out, or eliminated. A brief analysis of other states' deregulatory efforts offers observations on common threads running through those legislative efforts, both successful and unsuccessful. Finally, this paper details key issues such as broadband deployment, the Lifeline/Linkup programs, service quality, and the Emergency Response System.

State regulatory commissions and legislatures continue to actively debate the appropriate degree of continued regulatory oversight of telecommunications carriers. Inter-modal competition (cell phones, broadband, etc) is changing the industry. Federal proceedings are balancing federal and state regulation against innovation and entrepreneurship. With the largest providers driving many state-level initiatives, seeking sweeping deregulation through legislation or commission proceedings, the Indiana Office of Utility Consumer Counselor believes policy makers must weigh issues such as:

- Ensuring consumers' access to affordable basic service,
- Protecting and educating consumers,
- Continuing high service quality standards,
- Encouraging the deployment of new technologies,
- Developing Indiana's competitive environment, and
- Providing a process to resolve issues expeditiously.

The Federal Communications Commission (FCC) has become increasingly active in telecommunications regulation, examining its role as well as the role of states in issues like pre-emption of Indiana's State Do Not Call List, Truth-In-Billing rules, Universal Service funding and implementation, inter-carrier compensation, carrier disputes, area code numbering, consumer protection issues, and balancing states' rights against uniform federal standards for regulating emerging technologies. New federal legislative initiatives, including efforts to update and refine the Telecommunications Act of 1996 and proposals expanding and altering the Universal Service Fund collection base, will significantly impact not just Indiana, but the national telecommunications industry as a whole.

Nebraska and South Carolina haven't regulated retail telecommunications services since 1986. Despite Federal initiatives - or because of them - thirteen states enacted legislation authorizing telecommunications deregulation within the last two years. Connecticut's legislature passed dereg legislation in 2005, but the Governor vetoed it. Wisconsin and Colorado continue deregulation discussions in open dockets before their respective Commissions, while the California and Oklahoma public utility commissions are studying the issue at their legislatures' request. Georgia enacted 2005 legislation establishing a committee to look into the topic.

Examining enacted deregulation legislation, we find several common threads, including:

- Enacted legislation tends to have items benefiting both the utilities and the consumers.

- Most legislation relaxes regulation of utilities' rates for "vertical" and competitive services.

- Most legislation retains some form of PUC jurisdiction over Basic Local Service (BLS) rates for single line residential and business consumers.

In 2004-2005, eleven other state legislatures introduced telecom dereg bills that were not enacted. Even comparing enacted deregulation legislation to its unsuccessful counterparts, commonalities exist:

- Most remove all services from regulation except for BLS.

- Most exempt Broadband services and VoIP from PUC jurisdiction.

- Most establish service quality standards utilities must continue to meet.

Twenty states have seen no initiatives and continue to regulate their telecom utility rates and tariffs in some manner. Hawaii, New Hampshire, and Washington all continue to use traditional, rate-of-return regulation, while large telecommunications utilities in the remaining seventeen states have some sort of relaxed regulation (price caps, rate freezes, or pricing flexibility).

Before these deregulation efforts started in other states, Indiana was well on the road to relaxed regulation. Indiana's Alternative Regulatory statute helped the telecommunications industry move to a market-based approach. History speaks well for the vision and foresight that went into its drafting. Sufficient flexibility was included, permitting the statute to stand the test of time, even in the face of dramatic technology, market and regulatory changes. The statute empowered the Indiana Utility Regulatory Commission to use non-traditional procedures implementing federal regulatory changes. The mushrooming number and reach of those changes during the last several years only underscores the ongoing need for IURC procedural and regulatory flexibility. The

statute's built-in safeguards also give the Commission authority to reassert some or all of its jurisdiction over particular telephone services or providers if warranted by changes in the industry, market, or under other circumstances.

Over the past several years, the IURC significantly reduced its regulation over long distance, alternative operator services, and most notably, wireless – where the IURC's mid-80's declination of jurisdiction came years before Congress limited states' authority - demonstrating the Commission's commitment to encouraging the deployment of new telecommunications technologies in Indiana. Over the last decade, the Commission has approved a total of six Alternative Regulatory Plans, for SBC, Sprint, and Verizon. These were settlements, negotiated between the utilities and the OUCC and, in some instances, Citizens Action Coalition and IURC testimonial staff. In each of these agreements the utility won greater freedom in managing non-basic local service rates while holding Basic Local Service for residential and small business users to an affordable price.

As of today, the IURC has placed 2,990,766 access lines held by SBC, Sprint, and Verizon under alternative regulation, allowed twelve companies (totaling 59,892 access lines) to opt-out from IURC jurisdiction, and continued the exemption of eight cooperatives (approximately 45,236 access lines) from jurisdiction. Eighteen companies (representing only 64,295 access lines) remain under IURC jurisdiction. By declining jurisdiction over Competitive Local Exchange Carriers (CLECs), wireless, and emerging technologies, the IURC has retained full jurisdiction over only approximately 2% of Indiana's access lines.

Even as the Commission continues to implement relaxed regulation, telecommunications' competitive picture continues to change. Congress passed TA-96 to promote competition, reduce regulation, secure lower prices and higher service quality for American consumers. With CLECs able to lease lines from the ILECs at wholesale rates, CLECs brought added innovation and competition, including the early adoption of residential broadband service via digital subscriber line (DSL) technology. By 2000, at least 380 CLECs provided service in the United States.

Since then, the number of CLECs providing service has dropped dramatically. The IURC's 2005 Regulatory Flexibility Committee Report (using 2004 data) shows an 87% ILEC market share (3.75 million access lines) while CLECs held 13% (582,000 access lines). The SBC-AT&T and Verizon-MCI mergers will change the competitive landscape even further - ILEC-CLEC market share will likely be closer to 93%-7%. Disturbingly, the FCC reports national telephone penetration rates (residences with telephone service vs. total residences) declined from 95.5% in November 2004 to 92.4% in March 2005. The FCC's recent Telephone Subscription Report shows Indiana's 2004 average penetration at 91.8%.

Alternatives to traditional landline service are increasing. Wireless service, Cable-digital Telephone, and Voice over Internet Protocol (VoIP) are three options now available to

some consumers. In Indiana, nine companies currently provide service to 2,844,568 wireless customers with the "Big Three" (SBC, Sprint, and Verizon) playing dominant roles by virtue of their ownership in wireless providers Sprint, Verizon Wireless and Cingular (SBC currently owns 60%). VoIP is often cited as the next evolutionary step in voice communication, with 2.7 million subscribers nationwide and growing. Though the revenue generated by consumer VoIP services remains relatively small – $220 million – forecasted annual VoIP revenues hit $3 billion within two years. Coaxial cable is not new, but digital cable voice telephone is swiftly becoming a significant player in the telecommunications industry in Indiana. Traditional cable entertainment companies are entering the voice and data communication environment. Packaging voice, data and entertainment, offerings from companies like Comcast, Time Warner, Sigecom, Bright House, and Insight are forcing traditional telecommunications companies to re-orient business operations to compete in previously foreign territory. For the consumer, this may well lead to a wider selection of full-service packages at competitive prices.

Additional deregulation will require that policy makers weigh its benefits against its effects on important state programs like low-income assistance from the Lifeline/Linkup programs, access to 911 & E-911 emergency response services, service quality and increased broadband deployment. Indiana's current Lifeline/Linkup "take rate" is 13%, dramatically worse than the 33.7% national rate. Few would suggest 911 & E911 - the services consumers need to contact emergency assistance – are anything less than critical to Indiana's safety and security. Indiana's county commissioners face issues such as increasing costs, available revenues, database integrity and VoIP 911 integration. Indiana wireline service quality is still IURC-regulated, while Federal rules govern wireless and most emerging technologies. This disparity can sometimes create an unlevel playing field. Indiana consumers deserve high service quality standards, so any new standard must (a) be technologically neutral; (b) apply to all carriers; and (c) ensure consumers will continue receiving high quality, reliable service in any deregulated environment.

Broadband is another essential consideration. As of June 2004, the FCC reported 179,942 DSL, 304,866 Cable, and 34,706 other Broadband-provisioned access lines in Indiana (519,514 total). The three most recent, Commission-approved, negotiated ARPs further broadband deployment in the state and brought additional value to consumers. SBC has promised to deploy high speed services to at least 77% of its "living units" by June 30, 2008, with at least 30% of the newly deployed infrastructure placed in rural areas. Verizon's agreement included 73% coverage by December 31, 2007 with a minimum of 40% rural deployment, coupled with a promise that 100% of those high-speed lines will be able to provide "stand-alone" or "naked" DSL - high speed service without requiring customers to also purchase Verizon basic local service. The Sprint ARP commits the company to providing high-speed services over 70% of their access lines by December 31, 2008. In addition, Indiana consumers are not limited to services provided by traditional telephone providers. Depending on availability, customers can receive broadband through DSL, Cable, Wi-Fi, Satellite, and Broadband-Over-Powerlines. Even newer technologies may be on the horizon: Broadband-Over-Gaslines is one technology in the developmental stages.

In conclusion, it may well be time for Indiana to consider additional deregulation of the telecommunications industry. As policy makers weigh the options, it's important they also consider the advantages and pitfalls of each option – not to avoid deregulation, but to ensure Indiana moves into this new environment smartly and avoids the costly mistakes other states may have made. And in doing so, Indiana once again steps out – leading the nation forward – not only as a leader, but also as a guide and teacher.

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Chapter 1 – Where We Are in 2005 – Competition in Indiana's Telecom Industry

Congress passed TA-96 to promote competition, reduce regulation, secure lower prices and improve service quality.[1] This allowed CLECs to lease ILEC lines at wholesale rates, and bring innovation and competition - including early adoption of residential broadband service through digital subscriber line (DSL) technology.[2] By 2000, about 380 CLECs provided service in the US. Today only about 120 remain.[3]

Mergers between the largest companies (SBC–AT&T, Verizon–MCI) signal a new era where wireline competition is narrowing as fewer carriers offer service. Meanwhile, the CLEC competitors continue to decrease, claiming that competing with entrenched ILECs is now unprofitable.

Wireline Competition

The 2005 IURC Reg Flex report calculates 4,337,000[4] Indiana in-use access lines (3,755,000 ILEC, plus 582,000 CLEC).[5] The report also shows CLEC wireline shares increasing to 13.4% in 2004 (up from 5.9% in 2001).[6] However, this 2001-2004 upward trend is unlikely to continue. The Reg Flex report shows the competitive telecom market divided 87%-13% between ILECs and CLECs.[7] Using these numbers in conjunction with data presented in charts 3 and 4 of the report, one can calculate that over 250,000 of the 582,000 CLEC lines belong to AT&T and MCI. Combining these lines, with the access lines already controlled by ILEC-affiliated CLECs, the post-merger market controlled by the ILECs jumps to 93%.[8]

Other Competitors

Wireless

According to the FCC, nationwide mobile wireless telephone subscribers

1 Rosenberg, Ed and McGarvey, Joe. What to Think About When You Think about Telecommunications Deregulation. The National Regulatory Research Institute, April 2005.

2 Barret, Randy. For CLECs, The Boom Days Are Over. The National Journal. July 28, 2005.

3 Id.

4 Page 2, Table 1 of the IURC report incorrectly reflects this number as 4,347,000. This is a typographical error.

5 2005 IURC Reg Flex Report, page 2, Table 1.

6 Id.

7 Id.

8 Calculated by adding the Total ILEC access lines plus the ATT+MCI CLEC shares, then adding the ILEC affiliate CLEC share to get a total ILEC controlled access line market share.

increased 15% in 2004[9]. The number of Indiana wireless customers continues to increase, from 2.8 million users[10] to over 3.1 million.[11]

Nine companies provide wireless voice service to Indiana consumers (Verizon, Nextel, Nextel Partners, T-Mobile, U.S. Cellular, Cingular, Sprint, Cincinnati Bell, and Centennial). Of those, SBC, Sprint, and Verizon remain the dominant players by virtue of their ownership in the wireless industry (Sprint and Verizon Wireless are common names, while SBC currently owns 60% of Cingular).

Cable

Traditional cable entertainment companies (Comcast, Insight, Bright House, Time Warner) are expanding into traditional voice communication. Providing service over their own networks, cable's primary vehicle for telecom services will likely be VoIP-based.

VoIP

VoIP (Voice over Internet Protocol) is essentially internet telephony. Voice conversations are converted to digital data packets, then sent over the Internet or a dedicated Internet Protocol (IP) network instead of over dedicated voice transmission lines. The traffic may be deployed on any IP network, even one without an internet connection, like a Local Area Network (LAN) network inside a building.

VoIP has advantages over traditional telephony. Capable of rapid innovation, it typically has a lower per-call cost and offers a greater number of more advanced features. It has a comparatively low infrastructure cost and, because it is software-driven, hardware obsolescence is reduced. For example, widely available adaptors convert analog information to digital, allowing VoIP consumers to use their existing standard phones.

VoIP is hardly problem-free. Issues include susceptibility to virus and hacker attacks, E911 (see Chapter 8), "denial-of-service" attacks that clog the network and advanced phone fraud (see Chapter 5), among others.

There were an estimated 440,000 U.S. VoIP subscribers in the second quarter of 2004. In just one year, that number increased 613% to 2.7 million.[12] Still, fewer than 1% of U.S. telecommunications consumers[13] use VoIP as their means of

[9] Federal Communications Commission Releases Data on Local Telephone Competition, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259890A1.doc. In 2004, the wireless increased from 167.3 million to 181.1 million.

[10] See www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf

[11] 2004 wireless number of 3,158,002 wireless subscribers cited in Chairman William McCarty's Powerpoint briefing (slide 17) to the Indiana Regulatory Flexibility Committee, Sept. 8, 2005.

[12] "Number of Internet-phone Consumers Soars", Associated Press, updated 8:37 a.m. ET August 18, 2005 and reported by MSNBC.com.

[13] See http://www.clickz.com/stats/web_worldwide/article.php/151151 Site shows 295.73 million total U.S. population as of 12/31/04.

telecommunication. Consumer VoIP revenue has been estimated at around $220 million, and is forecasted to reach $3 billion annually within two years.[14]

VoIM

An emerging technology considered a spinoff of traditional VoIP service, Voice-over-Internet Messaging (VoIM) works much differently.

Though VoIM and VoIP both break voice calls into data packets, then route them over the Internet, VoIM is actually computer-to-computer voice service embedded as part of traditional instant messaging programs. Subscribers log on to their chosen program and have a conversation with others using the same program (consumer's systems must have a microphone and speakers attached and some programs require webcams). Companies currently offering the service include Skype, Google, Yahoo!, AOL, ICQ, and MSN.

The technology has drawbacks. Consumers using VoIM are tied to a computer, unlike traditional, wireless, or even VoIP service. And because of that, companies such as SBC, Cingular, and even Vonage retain an edge over the technology.

Independent Network Carriers

Like cable, some CLECs (including SIGECOM and First Mile), built their own infrastructure instead of leasing access lines from the ILECs. These competitors tend to be more regional/ local, providing a range of services, including video, broadband and voice.

Summary

Table 1-1, Status of Indiana Telecom Competition – Residential, summarizes the current competition climate in Indiana. The chart keys on competitive choice in three distinct types of residential service – Local, Long Distance, and Broadband, and treats VoIP services as a type of residential service rather than as a provider-based service.

[14] "Number of Internet-phone Consumers Soars", Associated Press, updated 8:37 a.m. ET August 18, 2005 and reported by MSNBC.com.

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Table 1-1, Status of Indiana Telecom Competition – Residential

	Basic Stand-Alone Local Service	Bundled Local-Long Distance Service	Broadband	Voice over Internet Protocol (VOIP)
Incumbents (ex.: SBC, Verizon, Sprint, TDS, Sunman, etc.)	Incumbents offer service in all parts of Indiana. Priced affordably. Unlimited calling within local area.	Incumbents offer service in most parts of Indiana. Offerings generally include unlimited local and long distance calling as well as other features.	Incumbents offer service in 70+% of households statewide. Broadband not usually available separately (Verizon offers Standalone Service to consumers).	Incumbent ILECs entering the VoIP provision market.
Competitive Phone line Carriers (ex.: Sage, etc.)	CLECs were formerly the primary source of residential competition until the FCC changed UNE rules. Now a collapsing business model with little to no new growth.	CLECs were formerly the primary source of residential competition until the FCC changed UNE rules. Now a collapsing business model with little to no new growth.	CLECs who offer broadband service still remain a viable competitive choice.	While not CLECs in Indiana, VOIP providers still offer residential competition.
Cable Companies (ex.: Time-Warner, Comcast, etc.)	Available to portions of Indiana's customers. Individual carrier expansion plans unavailable at the time of this report.	Available to portions of Indiana's customers. Individual carrier expansion plans unavailable at the time of this report.	Available to portions of Indiana's customers. Individual carrier expansion plans unavailable at the time of this report.	Competes with Incumbents' local/long-distance bundles, but only available if customer has a broadband connection.
Independent Network Carriers (ex.: Cinergy Communications, Sigecom, etc.)	Available to small portion of Indiana's customers.	Available to small portion of Indiana's customers.	Available to small portion of Indiana's customers. Individual carrier expansion plans unavailable at the time of this report.	Some carriers are examining a business model to provision VoIP service to customers.
Wireless (ex.: Cingular, T-Mobile, etc.)	Packages based on minute usage available to all Indiana consumers	Packages based on minute usage available to all Indiana consumers	Currently only available to consumers with phones capable of wireless broadband operations.	Not available to Indiana wireless customers at this time
Broadband over Power Lines (ex.: South Central Indiana REMC, Cinergy, etc.)	Not available to Indiana BPL customers at this time	Not available to Indiana BPL customers at this time	Available to limited numbers of Indiana households, more electric companies looking to enter market.	Not available to Indiana BPL customers at this time
Broadband over Gas Lines	Not available in Indiana	Not available in Indiana	Not available in Indiana	Not available in Indiana
Satellite (ex.: DirectWay, WildBlue, etc.)	Not Applicable	Not Applicable	Available throughout state, technology is look-angle dependent; expensive install costs; monthly rates still comparatively high.	Not Applicable

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Chapter 2 – How We Got Here—The IURC and the 1985 Alternative Regulatory Statute

Responsive Legislation

Adopted in 1985, Indiana's telecom "Alt Reg" statute responded to significant changes in federal telecommunications laws in the early to mid-1980's, following the court-ordered break-up of AT&T.[15] Since then it has required only a few, minor amendments and generated only a handful of appeals challenging any of the orders associated with it (most of which were later voluntarily dismissed once parties successfully negotiated settlement of underlying disputes).[16]

History speaks well for the vision and foresight which went into drafting Indiana's Telecom Alt Reg Statute. It has stood the test of time, even in the face of dramatic changes in telecommunications technology, markets and regulation. The statute empowered the IURC to use non-traditional procedures to quickly implement the many significant changes in federal law that have driven state regulatory action and reform since 1996. The number and reach of those federal changes have mushroomed during the last several years, underscoring the continued need for flexibility in procedural and regulatory options.

Indiana's Telecom Alt Reg Statute

In 1985, the Indiana General Assembly empowered the Indiana Utility Regulatory Commission (IURC) to deregulate Indiana's telecommunications industry as needed to further the public interest.[17] In determining whether relaxed regulation serves the public interest, the IURC must consider:

- Whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;
- Whether the exercise of commission jurisdiction produces tangible benefits to telephone company customers; and

[15] See *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1983) (the August 11, 1982 Final Judgment was modified on August 24, 1982, the "Modification of Final Judgment" or "MFJ"), *affirmed* 460 U.S. 1001, 103 S. Ct. 1240, 75 L. Ed. 2d 472 (1983). [The complete history of the break-up of AT&T spanned several decades and included countless federal District Court decisions not listed in this report.]

[16] See, *e.g.*, the following voluntary dismissals of appeals from the IURC's October 28, 1998, December 9, 1998 and January 20, 1999 Orders in Cause No. 40785 (IURC Access Charge Reform investigation) , 1998 Ind. PUC LEXIS 279: Indiana Bell (SBC) - Nos. 93A02-9902-EX-00124 and 93A02-9902-EX-00125, Indiana Court of Appeals (Orders Granting Appellant's Motions to Dismiss, August 6, 2001); United Telephone (Sprint) - No. 93A02-9902-EX-00123 in the Indiana Court of Appeals (Order Approving Appellant's Dismissal, January 20, 2000); and GTE North (Verizon) - No. 93A02-9902-EX-00121 in the Indiana Court of Appeals (Order Granting Appellant's Motion to Dismiss, February 23, 2000).

[17] Ind. Code §§ 8-1-2.6-1, *et seq.*, frequently referred to as Indiana's "Alt Reg" statute.

- Whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar telephone services or equipment.[18]

The IURC must also determine if three primary public policy objectives will be furthered or protected as a result of declining jurisdiction:

- Continued universal telephone service,
- Increased competition in Indiana's telecommunications markets, and
- Availability of state-of-the-art telephone services at reasonable and economic rates.[19]

Flexible New Procedural Options

Traditional rulemaking proceedings or administrative adjudications were not designed to spark the development and spread of competition,[20] so the Indiana General Assembly gave the IURC new authority to pursue industry-wide investigations and issue "generic" orders that applied across-the-board - if the proceeding furthered one or more of the following:

- Cost minimization (without sacrificing service quality),
- Increased accuracy and efficiency in assessing a telephone utility's physical or financial condition,
- Recognizing technological obsolescence through depreciation adjustments,
- Increasing management efficiencies to benefit consumers, and
- Sustaining competition in Indiana's telecommunications market.[21]

IURC Authority to Reassert Jurisdiction After Notice and Hearing

To protect Indiana consumers, the Indiana General Assembly also gave the IURC authority to reassert part or its entire jurisdiction if warranted by changes in the telecommunications industry, market conditions, or other circumstances.[22] The IURC has not yet used that authority – strong evidence that this power continues to guide telecommunications utility management and operational decisions made by deregulated providers.

The Regulatory Flexibility Committee

The Indiana General Assembly retains ultimate control over deregulation. The Regulatory Flexibility (Reg Flex) Committee reviews IURC annual reports, independently monitors developing competition in Indiana's telecommunications market, and recommends solutions to the legislative council to address any perceived problems. To carry out these tasks, the Reg Flex Committee considers: the effects of industry competition, the impact of competition on universal service, opportunities to enhance network conditions and modernize plant, the impact of modernization on economic development and educational

[18] Ind. Code § 8-1-2.6-2(b).

[19] See Ind. Code § 8-1-2.6-1(1), (2) and (4).

[20] See Ind Code 8-1-2.6-1(3) and (5).

[21] See Ind. Code 8-1-2.6-3.

[22] See Ind. Code 8-1-2.6-2(c).

opportunities within the state, the effectiveness of current regulatory methods, the social and economic impacts of existing telephone service pricing, and any other issues the Reg Flex Committee deems relevant.[23]

ARPs: Relaxed Regulation for Indiana's "Big Three"

In recent years, the Alt Reg statute has been used to craft Alternative Regulatory Plans (ARPs) for Indiana's three largest Incumbent Local Exchange Carriers (ILECs) – including three for Ameritech/SBC – permitting those carriers to enjoy increasingly relaxed regulation in Indiana since 1994.[24] Sprint has enjoyed reduced regulation under two consecutive ARPs beginning in the year 2000.[25] Verizon recently sought and received approval by the IURC for its first ARP in 2004.[26] These negotiated ARPs brought real value to both consumers and the utilities – 94.6%[27] of Indiana's consumers with wireline service have continued to receive Basic Local Service (BLS) without a significant increase for more than a decade, while Indiana's largest telecommunications providers have increased the number of non-regulated services and acquired pricing flexibility for those services as well as some of the most popular "non-BLS" services (operator assisted calls, local or long distance information service, call waiting, voice mail, caller ID, etc), without the need for cost support or IURC approval. The same is true for any new service offerings, including bundles or packages including BLS.

Table 2-1, Summary of Current ARP Agreements[28], gives a brief summary of the key components of each ARP agreement currently in place.

Relaxed Regulation for Smaller Incumbent Providers

During the 1980s, the Indiana General Assembly provided deregulatory tools that small carriers were free to use if they chose to do so to help keep local telephone service rates affordable even in sparsely populated rural service areas.

[23] See Ind. Code § 8-1-2.6-4.

[24] See SBC's first ARP, IURC Cause No. 39705, 1994 Ind. PUC LEXIS 250 (Order Approved June 30, 1994). Subsequent SBC ARP orders include IURC Cause Nos. 40785-S1, 40849, 41058, (2000 Ind. PUC LEXIS 241 - Order Approved May 10, 2000) and 42405 (2004 Ind. PUC LEXIS 253 - Order Approved June 30, 2004.)

[25] See IURC Cause Nos. 40785-S3 (December 29, 1999, 2000 Ind. PUC LEXIS 35 (Order Approved January 26, 2000), 2000 Ind. PUC LEXIS 64 (Order Approved February 16, 2000), and 2000 Ind. PUC LEXIS 191 (Order Approved July 6, 2000); Cause No. 42459 (December 30, 2003, 2003 Ind. PUC LEXIS 327).

[26] See IURC Cause Nos. 40785-S2 (December 29, 1999 and May 30, 2002); 42259 (July 28, 2004, 2004 Ind. PUC LEXIS 270).

[27] Access line information obtained from the Indiana Telecommunications Association 2005 membership Directory, pp. 7.

[28] Chairman William McCarty's Powerpoint briefing (slide 22) to the Indiana Regulatory Flexibility Committee, Sept. 8, 2005.

Table 2-1, Summary of Current ARP Agreements

	Sprint	SBC	Verizon
Term	**5 years**	**3 years**	**3+ years**
Price Flexibility	**3 Flexible Tiers with IURC oversight**	**3 Flexible Tiers with IURC oversight**	**3 Flexible Tiers with IURC oversight**
Broadband	**70% of lines capable by 12/2008**	**77 % of Living Units by 6/30/2008**	**73 % lines capable by 12/2007**
Local Rates	**Capped at existing levels**	**Capped at existing levels**	**Capped at existing levels**
Service Quality	**Standards above industry**	**Standards above industry**	**Standards above industry**
Consumer Education	**No specified amount**	**$850K**	**$800K**

When member-owned rural telephone companies (co-ops) opt out of IURC jurisdiction, the Commission's only ongoing involvement concerns territory issues and the administration of federal laws.[29] For a privately-owned, for-profit, rural ILEC to opt out of regulation, it must serve fewer than 40,000 access lines and face competition in at least part of its service territory.[30] In these cases the IURC retains jurisdiction over Certificates of Territorial Authority (CTAs), customer service complaints, interconnection arrangements, inter-carrier compensation rates, payment of public utility fees, administration of certain federal laws, and filing of informational tariffs and annual reports.[31] Many of Indiana's incumbent local providers have formed affiliated Competitive Local Exchange Carriers (CLECs) to provide competitive telecommunications services outside their service territories or to provide advanced telecommunications services throughout the state. These affiliates enjoy the relaxed regulation similar to CLECs, with a few additional requirements.[32]

[29] Ind. Code § 8-1-17-22.5.

[30] Ind. Code § 8-1-2-88.5. That opt out relief was originally available only to ILECs that served less than 6,000 access lines. That cap was recently increased to 40,000 lines.

[31] See Ind. Code 8-1-2-88.5(f) and (g).

[32] See, e.g., *In the Matter of the Petition of Miles Communications, Inc.*, IURC Cause No. 41295, 1999 Ind. PUC LEXIS 114 (Order Approved February 10, 1999). See also Ligtel Communications, IURC Cause No. 41706, 2000 Ind. PUC LEXIS 190 (Order Approved July 6, 2000); Mulberry Telecommunications, IURC Cause No. 41784, 2000 Ind. PUC LEXIS 546 (Order Approved December 13, 2000); Craigville Telephone, IURC Cause No. 42669, 2004 Ind. PUC LEXIS 364 (Order Approved November 3, 2004); Verizon Advanced Data Services, IURC Cause No 41769, 2000 Ind. PUC LEXIS 541 (Order Approved December 13, 2000); Sprint, IURC Cause No. 42494, 2003 Ind. PUC LEXIS 341 (Order Approved December 17, 2003).

Table 2-2 – Indiana ILEC Regulatory Status

Incumbent Local Exchange Carrier	Access Lines (2004)[33]	COOP/ IOU*	Regulatory Status
SBC	1,833,866	IOU	ARP (expires 06/2008)
SPRINT	256,900	IOU	ARP (expires 12/2008)
Verizon	900,000	IOU	ARP (expires 12/2007)
Bloomingdale Home Telephone Co.	650	IOU	Regulated
Century-Tel of Central Indiana	3,510	IOU	Regulated
Century-Tel of Odon	1,814	IOU	Regulated
Citizens Telephone Corporation	2,556	IOU	Regulated
Communications Corporation of Indiana (TDS)	12,781	IOU	Regulated
Frontier Communications of Indiana	2,821	IOU	Regulated
Frontier Communications of Thorntown	2,475	IOU	Regulated
Home Telephone Company (TDS)	2,270	IOU	Regulated
Home Telephone Company of Pittsboro (TDS)	3,331	IOU	Regulated
Ligonier Telephone Company	2,642	IOU	Regulated
Merchants and Farmer Telephone Co. (TDS)	552	IOU	Regulated
Northwestern Indiana Telephone Company	13,600	IOU	Regulated
S&W Telephone Company (TDS)	481	IOU	Regulated
Swayzee Telephone Company	1,100	IOU	Regulated
Sweetser Telephone Company	1,835	IOU	Regulated
Tipton Telephone Company (TDS)	5,238	IOU	Regulated
West Point Telephone Company	819	IOU	Regulated
Camden Telephone Company (TDS)	1,973	IOU	Withdrawn
Communications Corp of Southern Indiana(TDS)	1,916	IOU	Withdrawn
Craigville Telephone Company	1,378	IOU	Withdrawn
Enhanced Telecommunications Corporation	4,806	IOU	Withdrawn
Geetingsville Telephone Company	510	IOU	Withdrawn
Monon Telephone Company	1,625	IOU	Withdrawn
New Lisbon Telephone Company	837	IOU	Withdrawn
New Paris Telephone Company	2,158	IOU	Withdrawn
Rochester Telephone Company	8,217	IOU	Withdrawn
Smithville Telephone Company	31,751	IOU	Withdrawn
Tri-County Telephone Company (TDS)	3,572	IOU	Withdrawn
Yeoman Telephone Company	1,149	IOU	Withdrawn
Clay County Rural Telephone COOP	12,640	COOP	Unregulated
Daviess-Martin County Rural Telephone Corp.	3,451	COOP	Unregulated
Hancock Telecom	8,592	COOP	Unregulated
Mulberry COOP Telephone Company	2,950	COOP	Unregulated
Perry-Spencer Rural Telephone COOP	7,009	COOP	Unregulated
Pulaski-White Rural Telephone COOP	1,900	COOP	Unregulated
Southeastern Indiana RTC	4,900	COOP	Unregulated
Washington Rural Telephone COOP	3,794	COOP	Unregulated
Cincinnati Bell Telephone Company	5,820	IOU	Exempt - under Ohio regulation

- IOU – Investor Owned Utility

Summary of IURC Deregulation Efforts

Thus far, the IURC has placed 2,990,766 access lines held by three companies (SBC, Sprint, and Verizon) under ARPs, while allowing thirteen companies (totaling 65,712 access lines) to opt out from IURC jurisdiction. Eight cooperatives holding approximately 45,236 access lines are exempt from IURC jurisdiction, while seventeen companies (holding 58,475 access lines) remain under IURC jurisdiction.

[33] Access line information obtained from the Indiana Telecommunications Association 2005 membership directory, pp. 7.

Looking only at ILEC access lines, the IURC retains full jurisdiction over only approximately 2% of the wireline access lines in Indiana. Table 2-2, Indiana ILEC Regulatory Status, summarizes ILEC regulatory status in Indiana.

Chapter 3 – The Breakup of Ma'Bell – and Indiana's Response

The federal break up of AT&T[34] theoretically opened Indiana's long distance markets to competition. However, because consumers using competitive long distance providers were required to dial access codes and passwords before they could place long distance calls (as opposed to 1 + area code + number), established providers had an enormous marketing advantage and competition was initially constrained. The IURC again used the Alt Reg statute to develop standards of "dialing parity" - ensuring open access to competitive intra-state long distance service options.[35] By leveling the playing field, the IURC created a regulatory environment that encouraged competitive entry and growth in Indiana's intra-state long distance market.

Increasing competition led to further IURC long distance deregulation, with a series of generic orders declining additional regulatory authority.[36] The Commission streamlined certification procedures for long distance reseller, eliminated formal petition filing and hearing requirements and adopted a standard application form. Following initial streamlining, the IURC made tariff filings informational.[37] By 1999, it eliminated all tariff filing requirements for resold long distance service in Indiana. Today, requests for Indiana long distance resale authority are automatically granted 30 days after published notice of their filing, absent a timely objection or hearing request. Despite those increasingly broad declinations of jurisdiction, the IURC retained its full authority over consumer

[34] See *United States v. American Tel. & Tel. Co*., 552 F. Supp. 131 (D.D.C. 1983) (the August 11, 1982 Final Judgment was modified on August 24, 1982, the "Modification of Final Judgment" or "MFJ"), *affirmed* 460 U.S. 1001, 103 S. Ct. 1240, 75 L. Ed. 2d 472 (1983). [The complete history of the break-up of AT&T spanned several decades and included countless federal District Court decisions not listed in this report.]

[35] See IURC Order Approved November 26, 1996 *In the Matter of the Petition of AT&T Communications of Indiana, Inc., LCI International Telecom Corp., Sprint Communications Company L.P., and Worldcom, Inc. d/b/a LDDS Worldcom for Commission, Approval of 1+/0+ MTS on a Presubscribed Basis with Respect to the Provision of their Intrastate Intralata Services*, Cause No. 40284, Indiana Utility Regulatory Commission, 1996 Ind. PUC LEXIS 458.

[36] See the IURC Wide Area Telephone Service (WATS) Resellers proceeding, IURC Cause No. 38149, 1986 Ind. PUC LEXIS 138, (Order Approved September 17, 1986); 1988 Ind. PUC LEXIS 10, 89 P.U.R.4th 468 (Order Approved January 20, 1988); 1989 Ind. PUC LEXIS 25 (Supplemental Order Approved February 1, 1989); Ind. PUC LEXIS cite not available (Second Supplemental Order Approved March 11, 1992); 1992 Ind. PUC LEXIS 70 (Third Supplemental Order Approved April 8, 1992); 1996 Ind. PUC LEXIS 131 (Fourth Supplemental Order Approved April 3, 1996); 1996 Ind. PUC LEXIS 165 (Fifth Supplemental Order Approved May 24, 1996); 1997 Ind. PUC LEXIS 403 (Sixth Supplemental Order Approved October 22, 1997); and 1998 Ind. PUC LEXIS 164 (Seventh Supplemental Order Approved January 14, 1998)

[37] IURC approval for "informational" tariff filings is not required.

complaints, permitting it to continue to protect consumer interests in a largely deregulated intra-state long distance market.

Reduced Regulation of Alternative Operator Services

Demand for immediate billing detail on long distance calls placed by guests at hotels, hospitals, etc, led the IURC to approve the use of Alternative Operator Services (AOS) in Indiana. [38] Since AOS rates tend to be higher than "regular" operator service rates, the IURC approved special notice requirements to protect consumers.[39] The AOS provider must identify itself to the consumer and provide a toll-free number to check applicable AOS rates before placing any long distance calls. Over time, the IURC has also excused AOS providers from submitting cost support to justify higher tariffed rates, as long as the AOS providers' rates are less than or equal to the highest rates charged by traditional, facilities-based operator service providers.

[38] These types of facilities are frequently referred to as "call aggregators".

[39] *In the Matter of an Investigation Regarding Alternative Operator Services, Cause No. 38812, Indiana Utility Regulatory Commission*, 1991 Ind. PUC LEXIS 240, 126 P.U.R.4th 514 (Order on Settlement Agreement Approved July 10, 1991); 1995 Ind. PUC LEXIS 180 (Supplemental Order Approved June 21, 1995); 1995 Ind. PUC LEXIS 266 (*Nunc Pro Tunc* Order Approved September 27, 1995); (Second Order Reopening Investigation Approved November 2, 1995); and 1997 Ind. PUC LEXIS 407 (Order Approved November 5, 1997).

Reduced Regulation of Wireless

The IURC declined to exercise most of its jurisdiction over radio common carrier and cellular service providers in the mid-1980s – years before Congress limited states' authority to regulate wireless rates and charges,[40] and decades before the Indiana General Assembly limited the IURC's authority over the terms and conditions of wireless service.[41] The IURC's early relinquishment of regulatory control was meant to speed the deployment of new telecommunications technologies in Indiana, making affordable wireless service available to all interested consumers as soon as possible.[42] The IURC retained its investigative authority and its authority over highly streamlined state certification or registration requirements.

In 2004, the IURC asserted its authority over wireless carriers with regard to state universal service funding assessments.[43]

[40] See 47 U.S.C. 332(c)(3).

[41] Ind. Code § 36-8-16.5-50 (eff. July 1, 2005).

[42] *In the Matter of an Investigation to Determine the Extent of Regulation of Radio Common Carriers and Cellular Mobile Communications Carriers by the Commission Pursuant to Public Law 92-1985, I.C. 8-1-2.6-1, et. seq.*, Cause No. 37896-S1, Indiana Utility Regulatory Commission, 1999 Ind. PUC LEXIS 230 (Order Reopening Cause for Limited Consideration of Proposed Streamlined Regulatory and Administrative Procedures, Approved August 18, 1999); 1999 Ind. PUC LEXIS 473 (Order Approved October 13, 1999).

[43] In the Matter of the Investigation on the Commission's Own Motion Under Indiana Code § 8-1-2-72, Into Any and All Mattes Related to the Commission's Mirroring Policy Articulated in Cause No. 40785 and the Effect of the FCC's MAG Order on Such Policy, Access Charge Reform, *(footnote continued)*

A number of wireless carriers are currently challenging the IURC's legal authority to impose universal service funding requirements on wireless carriers under a new amendment to Indiana's wireless Enhanced 911 (E-911) statute which took effect on July 1, 2005.[44] Before that recent statutory amendment, Indiana law followed TA-96[45] and related cases decided in other parts of the country, that prohibited state regulation of wireless rates and charges, but permitted state regulation of "other terms and conditions" of wireless service.[46] The wireless carriers challenging the IURC's authority to require them to contribute to a state Universal Service Fund (USF) rely on the statutory language that took effect in Indiana on July 1, 2005,[47] and language in a decision issued by the Fifth Circuit Court of Appeals, finding that requiring contributions to a universal service fund constituted regulation of "terms and conditions" of service, not regulation of wireless service rates.[48]

Reduced Regulation of Intra-State Access Charges in Indiana

After TA-96, the significance of access charges – compensation paid to Indiana LECs to complete long distance calls – increased dramatically.[49] The IURC had not required Indiana ILECs to file cost support for their tariffed intra-state access rates. Instead, the Commission took advantage of the Alt Reg statute[50] and allowed the phone companies to charge the same rates (or "mirror") that the Federal Communications

Universal Service Reform, and High Cost or Universal Service Funding Mechanisms Relative to Telephone and Telecommunications Services within the State of Indiana, Respondents: All Telecommunication Service Providers, Including Intrastate Wireless Carriers, in the State of Indiana, Cause No. 42144, Indiana Utility Regulatory Commission, 2004 Ind. PUC LEXIS 61 (Order Approved March 17, 2004).

[44] See Ind. Code § 36-8-16.5-50 (eff. July 1, 2005), and each of the wireless company Appellants' two Petitions for Rehearing filed with the Indiana Court of Appeals on August 15, 2005, in *Nextel West Corp., et al. v. Indiana Utility Regulatory Commission*, Appeal No. 93A02-0404-EX-315. Those Petitions for Rehearing challenge the Indiana Court of Appeals July 15, 2005, decision in *Nextel West Corp., et al. v. Indiana Utility Regulatory Commission*, 831 N.E.2d 134, 2005 Ind.App. LEXIS 1262 (2005), which upheld the IURC's authority to create a state universal service fund ("SUSF") under Indiana's Telecom Alt Reg Statute and the IURC's authority to require intra-state telecommunications service providers, including the wireless company Appellants, to pay assessed amounts into the new SUSF.

[45] 47 U.S.C. 332(c)(3).

[46] *Texas Office of Public Utility Counsel v. Federal Communications Commission*, 183 F.3rd 393 (5th Cir. 1999) ("*TOPUC v. FCC*").

[47] Ind. Code § 36-8-16.5-50 (eff. July 1, 2005).

[48] *TOPUC v. FCC*, 183 F.3rd 393 (5th Cir. 1999).

[49] See IURC's "MAG" Order, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (Order Approved March 17, 2004), affirmed in *Nextel et al. v. IURC*, 831 N.E.2d 134, 2005 Ind. App. LEXIS 1262 (Ind. Ct. App. July 15, 2005. Appellants' Petitions for Rehearing currently pending before the Indiana Court of Appeals under Case No. 93A02-0404-EX-315.
See also Further Notice of Proposed Rulemaking *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, 20 FCC Rcd 4685, 2005 FCC LEXIS 1390 (March 3, 2005). Note also that the advent of inter-modal competition further complicates pending intercarrier compensation issues.

[50] Ind. Code §§ 8-1-2.6-1, *et seq.*

Commission (FCC) approved for inter-state access rates.[51]

Recent changes at the federal level, governing inter-state access,[52] caused the IURC to revisit its intra-state access charge policy.[53] Those changes permitted ILECs to recover lost revenues (resulting from reductions in inter-state access charge revenues) directly from Indiana consumers through surcharges called subscriber line charges (SLCs).[54] Because Indiana's mirroring rule essentially doubles the amount of lost access charge revenues LECs can recover directly from local service customers under the new rules, the IURC held hearings to examine the possibility of "breaking the mirror." This would have required Indiana carriers to demonstrate cost allocations, provide cost study filings and added state-level approval of intra-state access charges.[55] The majority of Indiana ILECs and long distance providers reached a settlement opposing breaking the mirror and agreed to further decrease access charges for intra-state long distance traffic, so long as ILECs were permitted to recover any lost access revenues directly from their local service customers through increased line item surcharges on their local service bills.[56] Under the IURC-approved industry settlement, increases in line item surcharges are not mandatory and can be phased in over a period of several years to help reduce rate shock for end users.

[51] See, e.g., SBC, Verizon and Sprint's joint petition, IURC Cause No. 37905, 1986 Ind. PUC LEXIS 509 (Interim Order Approved January 8, 1986); 1986 Ind. PUC LEXIS 215 (Second Interim Order Approved August 6, 1986); 1986 Ind. PUC LEXIS 125 (Order on Petition of Petitioning Telephone Companies for Rehearing or Reconsideration Approved October 1, 1986); Indiana Utility Regulatory Commission (Third Interim Order Approved February 4, 1987); 1987 Ind. PUC LEXIS 21 (Fourth Interim Order Approved December 9, 1987); 1988 Ind. PUC LEXIS 331, 96 P.U.R.4th 247 (Fifth Interim Order Approved September 7, 1988); 1990 Ind. PUC LEXIS 335 (Final Order Approved September 19, 1990); and 1993 Ind. PUC LEXIS 7 (Order on Request for Leave to Dispense with a Particular Parity Access Filing Approved January 20, 1993). See also the IURC's own investigations on this topic:
IURC Cause No.38269, 1989 Ind. PUC LEXIS 163; 102 P.U.R.4th 321 (Order Approved April 12, 1989); IURC Cause No. 39369, (Preliminary Order Approved May 20, 1992; Order Continuing the Lifting of the Stay Approved November 12, 1992; Second Order Continuing the Lifting of the Stay Approved March 31, 1993) ; Third Order Continuing the Lifting of the Stay and Order on Less Than All the Issues Approved April 30, 1993); IURC Cause No. 40785, (Order Approved December 9, 1998; Order on Petitions for Reconsideration/ Rehearing, January 20, 1999).
See also the *IURC MAG Order*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (Order Approved March 17, 2004).

[52] Second Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 00-256, 96-45, 98-166, FCC 01-304, 16 FCC Rcd 19163 (November 8, 2001)("FCC MAG Order"). This matter was an industry-proposed settlement approved by the FCC.

[53] *IURC MAG Order*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (Order Approved March 17, 2004).

[54] Subscriber line charges ("SLCs") are also referred to as End User Common Line charges ("EUCLs").

[55] *IURC MAG Order*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (Order Approved March 17, 2004).

[56] Id.

Summary

Years before the 1996 Telecommunications Act (TA-96)[57] required local exchange markets to be opened to competition, the IURC's "Local Competition Docket"[58] examined industry concerns regarding competitive entry into Indiana. The Alt Reg statute[59] let the IURC use unique procedures to identify conflicts and encourage the parties to create mutually acceptable solutions. IURC technical conferences brought industry representatives, IURC staff and Office of Utility Consumer Counselor (OUCC) staff together to identify possible roadblocks to competition and to develop solutions.

In January of 1996, the Local Competition Docket's Executive Committee submitted its report to the IURC, summarizing issues examined and recommendations made by the majority of industry participants.[60] The IURC ultimately issued several comprehensive orders opening the door to competition in Indiana,[61] but TA-96's passage limited the IURC's ability to rapidly implement the Executive Committee recommendations[62] because the new federal requirements were challenged repeatedly in subsequent federal court proceedings across the country.[63]

Despite these delays, the IURC pressed forward, facilitating the development of competition in Indiana's local exchange

[57] Pub. L. No. 104-104, 110 Stat. 56 (1996)(currently codified in various sections of 47 U.S.C. §§ 151, *et seq*.).

[58] IURC Cause No. 39983, June 15, 1994.

[59] *Competition in the Provision of Telephone Services*, Ind. Code §§ 8-1-2.6-1, *et seq*.

[60] See January 16, 1996 *Executive Committee Report* filed in the IURC's Local Competition Docket.

[61] See the following IURC's Local Competition Docket orders: June 5, 1996 *Interim Procedural Order*, 1996 Ind. PUC LEXIS 217, and August 21, 1996 *Amended Interim Procedural Order*, 1996 Ind. PUC LEXIS 278 (on the negotiation or arbitration of interconnection agreements) and the July 1, 1996 *Interim Order on Bundled Resale and Other Issues*, 1996 Ind. PUC LEXIS 265, 171 P.U.R.4th 52).

(footnote continued)

[62] See *In re Implementation of Local Competition in Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15857 ¶ 704 (1996)(*First Report and Order*), and *In re Implementation of Local Competition Provisions in Telecommunications Act of 1996*, 11 FCC Rcd 19392 (1996)(*Second Report and Order*).

[63] For example, federal standards governing ILECs' duty to provide CLECs access to unbundled network elements ("UNEs") under 47 U.S.C. § 251have yet to be upheld on appeal. See *AT&T Corp. v. Iowa Util. Bd*., 525 U.S. 366 (1999); *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*"), cert. denied sub nom *Worldcom, Inc. v. U.S. Telecom Ass'n*, 538 U.S. 940 (2003); subsequent appeals of the FCC's Triennial Review Order ("TRO"), Report and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 03-36, 18 FCC Rcd. 16,978, ¶ 465 (rel. August 21, 2003), affirmed in part and vacated and remanded in part in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), cert. denied, 125 S. Ct. 345 (2004); and pending federal appeals recently consolidated for review under Case No. 05-1058 in the D.C. Circuit Court, challenging the FCC's Triennial Review Remand Order ("TRRO"), *Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (rel. Feb. 4, 2005).

markets. The IURC has re-opened its generic Local Competition Docket several times to supplement or amend prior orders,[64] continuing to reduce regulatory requirements for Indiana's CLECs. As a result, CLECs can now provide bundled resale service in Indiana without filing any formal petitions or testimony. Instead, they fill out a standard application form and submit it to the IURC for review.[65] Absent an objection, the authority is granted. Since 1999, neither bundled resellers nor facilities-based CLECs need to provide cost support for tariff changes, which automatically take effect the day after they are filed.[66]

[64] Ind. Code § 8-1-2.6-2.

[65] See the following orders entered in the *IURC's Local Competition Docket*: September 9, 1999 *Order*, 1999 Ind. PUC LEXIS 466, and October 13, 1999 *Clarification Order and Order on Petition for Reconsideration*, 1999 Ind. PUC LEXIS 378.

[66] *Id.*

Chapter 4 – The Impact of Federalism on State Regulation

The number of IURC proceedings involved with implementing TA-96 dominated the IURC's telecom case load and eclipsed more traditional state regulatory functions. Using procedures established in the Local Competition Docket,[67] the IURC processed hundreds of CLEC petitions for CTAs to provide local exchange service in Indiana. Some CLECs were "bundled resellers",[68] purchasing retail services from ILECs at discounted wholesale rates then reselling as-is to retail users. Other CLECs were "facilities-based UNE" providers[69] using their own facilities while also purchasing access to Unbundled Network Elements, portions of ILEC networks. Because the CLECs required interconnection agreements with the ILECs before they could provide Indiana local exchange service, the IURC would need to process an avalanche of new petitions. In 1996 the IURC established new generic procedures for these purposes[70] and has since reviewed and approved hundreds of negotiated interconnection agreements and arbitrated numerous interconnection disputes.[71]

Setting Wholesale Discounts and UNE Rates

TA-96 and the FCC implementation orders it spawned called for state and federal regulators to work together.[72] States were expected to set wholesale rates using FCC standards. Bundled reseller wholesale discount rates were supposed to reflect ILEC cost savings assuming wholesale, rather than retail customers (such as reduced advertising, overhead, sales commissions, etc). As part of the Local Competition Docket, the IURC approved interim wholesale discount rates for SBC and Verizon,[73]

[67] See discussion of *Local Competition Docket* in Chapter 2 of this report.

[68] See, *e.g.*, *Communications Products, Inc* IURC Cause No. 40642, 1997 Ind. PUC LEXIS 28 (Order Approved February 5, 1997). See also *Midwest Telecom*, IURC Cause No. 40669, 1997 Ind. PUC LEXIS 50 (Order Approved January 23, 1997).

[69] See, *e.g.*, *TCG Indianapolis*, IURC Cause No. 40478, 1997 Ind. PUC LEXIS 44 (Order Approved January 23, 1997). See also *AT&T Communications of Indiana, Inc.*, IURC Cause No 40652, 1997 Ind. PUC LEXIS 107 (Order Approved May 8, 1997).

[70] See 47 U.S.C. § 252, and pertinent orders entered in the IURC's *Local Competition Docket*, Cause No. 39983, 1996 Ind. PUC LEXIS 217 (Interim Procedural Order Approved June 5, 1996); 1996 Ind. PUC LEXIS 278 (Amended Interim Procedural Order Approved August 21, 1996); 1996 Ind. PUC LEXIS 542 (Order on Reconsideration and Resale Issues Approved December 18, 1996).

(footnote continued)

[71] See, e.g., AT&T - GTE North / Contel of the South, interconnection, IURC Cause No. 40571-INT 02, 1996 Ind. PUC LEXIS 427 (Order Approved December 12, 1996).
See also Ameritech Indiana - Time Warner Communications interconnection, IURC Cause No. 40572-INT-02, Indiana Utility Regulatory Commission, 1996 Ind. PUC LEXIS 474 (Order on Negotiated Interconnection Agreement Approved November 13, 1996).

[72] The division of state and federal regulatory authority in setting wholesale rates and other terms and conditions of interconnection is explained in 47 U.S.C. §§ 251 and 252.

(footnote continued)

later replacing them with permanent rates in separate Commission investigations.[74] The IURC then turned to the more difficult task of setting forward-looking wholesale rates for UNEs. After almost ten years, the IURC's UNE rate orders for SBC still are not final. Federal review proceedings are still pending,[75] and changes in federal law have further complicated and delayed their resolution,[76] increasing economic uncertainty for UNE-based CLECs.

SBC Compliance with TA-96 Market-Opening Requirements

TA-96 placed requirements on the nation's Regional Bell Operating Companies (SBC in Indiana) – but not on their competitors - which had to be met before SBC could offer the full range of in-state long distance services. The FCC required SBC to demonstrate wholesale customers were being treated fairly[77] prior to receiving approval. The IURC's state-level review of SBC Indiana's performance examined interconnection and collocation arrangements, verifying SBC's systems could process large numbers of CLEC service orders and handle other wholesale functions. Without accurate and reliable wholesale service, UNE-based providers would not be able to compete in SBC's service territory. The IURC's informal, collaborative process produced SBC/CLEC agreement on many issues involving the effectiveness and reliability of SBC's operating support system (OSS) and its compliance with other federal market-opening requirements such as relevant factors to be measured, testing methodology, independent auditing of RBOC OSS test results, etc.[78] The IURC submitted its recommendation to the FCC and on October 15, 2003, the FCC determined that SBC Indiana had

[73] See IURC orders setting interim wholesale discounts for Indiana's two largest ILECs in the *Local Competition Docket*, 1996 Ind. PUC LEXIS 265, 171 P.U.R.4th 52 (Interim Order on Bundled Resale and Other Issues Approved July 1, 1996), 1996 Ind. PUC LEXIS 542 (Order on Reconsideration and Resale Issues Approved December 18, 1996); 1997 Ind. PUC LEXIS 454, 181 P.U.R.4th 284 (Order Approved October 15, 1997).

[74] See IURC orders entered in the Ameritech Wholesale Rate investigation, IURC Cause No. 41055, 1999 Ind. PUC LEXIS 10 and 73 (Order Approved February 25, 1999 and Order on Reconsideration Approved April 21, 1999). See also the GTE / Contel Wholesale Rate investigation, IURC Cause No. 41117, 1999 Ind. PUC LEXIS 460 (Order Approved October 21, 1999).

[75] Several IURC UNE rate orders for Ameritech Indiana (now SBC Indiana) are still pending federal review in the U.S. District Court for the Southern District of Indiana in *Indiana Bell Telephone Co., Inc. v. McCarty, et al.*, Case No. IP- 02-0656-C-B/S, consolidated review of Phase I and II Orders issued in Cause No. 40611-S1, 2002 Ind. PUC LEXIS 219 (Phase I Order Approved March 28, 2002); 2003 Ind. PUC LEXIS 116 (Phase 2 Order Approved February 17, 2003); , and *AT&T Communications v. Indiana Bell*, Case No. 1:04-cv-00582-SEB-VSS, review of Order issued in Cause No. 42393, 2004 Ind. PUC LEXIS 117 (Order Approved January 5, 2004).

[76] A more detailed discussion of continuing challenges to federal UNE requirements follows later in this Chapter. See also discussion of UNE requirements in Chapter 2, fn. 7.

[77] Id.

[78] SBC's TA-96 Section 271© case, IURC Cause No. 41657, 2002 Ind. PUC LEXIS 426 (Process Order Approved October 31, 2002).

met those requirements,[79] allowing it to compete more fully in the long distance market.[80] To guard against any future decline in OSS service quality, the FCC also approved an RBOC-proposed remedy plan to protect Indiana CLECs that required SBC to pay penalties if SBC failed to meet the agreed OSS service standards.[81]

Collaborative sessions are still periodically convened in the IURC's Section 271 Proceeding to fine-tune OSS performance measurements and standards. The IURC continues to monitor SBC's compliance as contemplated under federal law.[82]

Continuing Legal Challenges

In 2003 the IURC opened its Triennial Review Order (TRO) proceeding[83] to implement the FCC's TRO (revising UNE requirements).[84] After the D.C. Circuit Court overturned most of the FCC's TRO in March, 2004[85] the IURC stayed its investigation. Parties essentially agreed to maintain the status quo, pending the United States Supreme Court's ruling on several petitions. When the Court denied those petitions, the earlier D.C. Circuit Court order became final.[86]

In response, the FCC set forth some temporary rules[87] before issuing a more permanent and complete set in its Triennial Review Remand Order (TRRO) on February 4, 2005.[88] The TRRO basically eliminated the UNE platform (UNE-P)[89] as a vehicle for

[79] *In the Matter of Joint Application by SBC Communications, Inc., et al., for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*, WC Docket No. 03-167, FCC 03-243, 18 FCC Rcd 21543, 2003 FCC LEXIS 5712 (Memorandum Opinion and Order, rel. October 15, 2003)("*FCC Sec. 271 Approval Order"*).

[80] See 47 U.S.C. § 271.

[81] See *FCC Sec. 271 Approval Order, supra.*

[82] See 47 U.S.C. § 272.

[83] IURC TRO Proceedings, IURC Cause Nos. 42500, 42500-S1 and 42500-S2.

[84] See *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366 (1999), and the FCC's subsequent TRO on TA-96 Section 251 unbundling obligations, FCC 03-36, 18 FCC Rcd. 16,978, ¶ 465 (rel. August 21, 2003).

[85] *United States Telecommunications Ass'n v. FCC, et al.*, 360 U.S. App. D.C. 202, 359 F.3d 554, 2004 U.S. App. LEXIS 3960 (D.D.C. March 2, 2004)(subsequent history omitted).

[86] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied*, 125 S. Ct. 345 (2004).

[87] See Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338 (FCC rel. Aug. 21, 2003).

[88] FCC Triennial Review Remand Order ("TRRO"), *Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, 20 FCC Rcd 2533 (FCC Order on Remand rel. Feb. 4, 2005).

[89] With unbundled network element platforms ("UNE-Ps"), CLECs could lease individual UNEs that, when re-combined by the ILEC, would approximate the bundled resale of ILEC retail services. Although the term "UNE-P" can be used to describe any number of UNE combinations, the UNE-P typically combines access to switching, transport and local loop functions.

competitive market entry. The TRRO also barred CLECs from placing new UNE-P local service orders and gave them until June 15, 2006, to phase-out existing UNE-P service arrangements. Competitors would need to deploy facilities or successfully negotiate and/or arbitrate new network service arrangements to ensure continued, uninterrupted local service to CLECs' existing retail customers. Other UNE arrangements were also affected. The TRRO reduced the number of locations where ILECs had to offer to sell UNEs to CLECs.[90]

The FCC's TRRO is the subject of a number of pending federal appeals consolidated for review in the D.C. Circuit Court.[91] More than ten years after TA-96 went into effect, legal challenges to the types of UNEs ILECs are required to provide, the circumstances under which they must provide them, and the rates at which they must offer them continue to challenge future CLEC survival. In the meantime, efforts to legislatively eliminate UNE requirements continue, as Congress considers possible technology-neutral amendments to federal laws governing the country's rapidly changing telecommunications industry.[92]

[90] See *TRRO*, *supra*.

[91] *Covad Communications Company, et al. v. Federal Communications Commission, et al.*, currently pending in the United States Court of Appeals for the District of Columbia under case No. 05-1095.

[92] See, *e.g.*, S. 1504, a Bill introduced by United States Senator John Ensign (R-NV). See also S. 1583, a Bill jointly introduced by United States Senators Smith, Dorgan and Pryor.

Administering Other Federal Telecommunications Laws

Intra-State Access Charge Reform

The IURC also set standards and/or rules to be used in later, company-specific rate rebalancing and access charge reform sub-dockets for SBC,[93] Verizon,[94] and Sprint.[95] Each of those cases ultimately settled, giving each carrier greater freedom in allocating costs and setting rates while protecting consumers' interests with increased broadband deployment and penalties for unacceptable service quality.

Number Conservation and Area Code Relief

Telephone number conservation measures – necessary to avoid the inconvenience and expense of additional

[93] SBC Indiana's second ARP ("Opportunity Indiana 2000" or "OI2"), IURC Consolidated Cause Nos. 40785-S1, 40849 and 41058, 2001 Ind. PUC LEXIS 138, 210 P.U.R.4th 102 (Order Approved March 19, 2001), 2001 Ind. PUC LEXIS 208 (Nunc Pro Tunc Order Approved March 29, 2001), 2001 Ind. PUC LEXIS 162 (Order on Petition for Reconsideration Approved May 24, 2001).

[94] GTE-Verizon access reform case, IURC Cause No. 40785-S2, 2000 Ind. PUC LEXIS 78 (Order Approved January 26, 2000); 2000 Ind. PUC LEXIS 96 (Order on Administrative Correction Approved March 22, 2000).

[95] Sprint's first ARP, IURC Cause No. 40785-S3, (Order Approved December 29, 1999); 2000 Ind. PUC LEXIS 35 (Order on Administrative Correction Approved January 26, 2000); 2000 Ind. PUC LEXIS 64 (Order on Administrative Correction Approved February 16, 2000); 2000 Ind. PUC LEXIS 191 (Order on Administrative Correction Approved July 6, 2000).

area code splits or overlays - led to additional IURC generic proceedings.[96] Once again, collaborative technical conferences were used, this time implementing "1000-block number pooling" (before required federal deadlines)[97] and facilitating the voluntary return of unused numbers. These measures significantly delayed the need for area code relief in parts of the state, giving consumers more lead time to prepare for future changes. Currently, the North American Numbering Plan Administrator (NANPA) projects that southern Indiana's "812" area code will need relief by the second quarter of 2008, central Indiana's "765" area code will follow (second quarter of 2010) with the greater Indianapolis-area's "317" likely by the third quarter of 2011.[98]

Local Number Portability

Local number portability (LNP) played a critical role in spurring competition in Indiana's local exchange and wireless markets. LNP allows customers to keep their local phone numbers when they change providers. Before ILECs were LNP-capable, the inconvenience associated with having to change telephone numbers when changing local or wireless service providers constituted a barrier to competition. The FCC was charged with implementing LNP, but shared that implementation authority with individual states. Initially only available when switching from one landline carrier to another, LNP now allows transfers between landline and wireless carriers. LNP implementation has been complex, but regulator-industry cooperation has resolved several highly technical issues through workshops, culminating in LNP Task Force recommendations later approved by the IURC.[99]

[96] IURC Area Code Investigation, IURC Cause No. 41535, 1999 Ind. PUC LEXIS 470 (Order Opening Investigation Approved September 9, 1999) (subsequent history omitted)

[97] *IURC Area Code Investigation*, 2000 Ind. PUC LEXIS 328 (Second Order on Procedural Schedule and Other Preliminary Matters and Protective Order Approved April 26, 2000); 2991 Ind. PUC LEXIS 124 (Order on Less Than All the Issues Approved February 14, 2001); 2001 Ind. PUC LEXIS 401 (Order on 219 NPA Area Code Relief Approved June 14, 2001) (subsequent history omitted).

[98] NANPA's *2004 Numbering Resource Utilization Forecast ("NRUF") and NPA Exhaust Analysis* released April 30, 2005. Exhaust projections for the NPA codes in northern Indiana indicate NPAs 219, 260 and 574 should have sufficient telephone number availability for the next fifteen years.

[99] See *Local Competition Docket*, Cause No. 39983, Indiana Utility Regulatory Commission, 1997 Ind. PUC LEXIS 213, 178 P.U.R.4th 394 (Order on Number Portability Issues Approved June 25, 1997); IURC Local Number Portability Investigation, IURC Cause No. 41083, 1997 Ind. PUC LEXIS 344 (Order Reopening Number Portability Investigation Approved December 23, 1997); 1998 Ind. PUC LEXIS 91 (Preliminary Order Approved April 1, 1998); 1998 Ind. PUC LEXIS 233 (Order Approved June 19, 1998); 1999 Ind. PUC LEXIS 381 (Order Accepting the September 1, 1999 Local Number Portability Task Force Recommendations, Approved October 13, 1999).

See also *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM 8535, FCC 96-286, 11 FCC Rcd 8352, 1996 FCC LEXIS 3430, 3 Comm. Reg. (P & F) 600 (First Report and Order and Further Notice of Proposed Rulemaking rel. July 2, 1996); CC Docket No. 95-116, RM 8535, DA 96-1124, 1996 FCC LEXIS 3656 (Erratum rel. July 15, 1996); RM-8535; CC Docket No. 95-116, FCC 97-74, 12 FCC Rcd 7236, 1997 FCC LEXIS 2977, 6 Comm. Reg. (P & F) 1106 (First Memorandum Opinion and Order on Reconsideration rel. March 11, 1997); CC Docket No. 95-116, RM 8535, FCC 97-289, 12 FCC Rcd 12281, 1997 FCC LEXIS 4545, 8 Comm. Reg. (P &

(footnote continued)

The Universal Service Fund (USF)

One of the cornerstones of the Telecommunications Act of 1996 was the goal of providing high-quality telecommunication services to all U.S. consumers at affordable rates by opening the local markets to competition and preserving universal service. Every carrier and provider of interstate telecommunications is required to contribute to the federal Universal Service Fund. Although not required to do so, telecommunications providers pass the USF cost on to consumers in the form of charges on telephone and wireless bills. The USF is administered by the not-for-profit Universal Service Administrative Company (USAC) under the direction of the FCC.

The USF encompasses four separate programs:

- Schools and Libraries support (also known as the E-rate program); [100]
- High Cost Support; [101]
- Low Income support (also known as Lifeline and Link-Up); and [102]
- Rural Health Care Support. [103]

In the recent FCC Telephone Subscription Report, Indiana's 2004 average penetration was 91.8% compared to the national penetration rate[104] of 93.5%. The IURC held technical conferences to refine contested issues and identify potential solutions regarding federal universal service program implementation in Indiana.[105] This largely collaborative process permitted the IURC to issue orders

F) 1377 (Second Report and Order rel. August 18, 1997) (subsequent history omitted).
See also *In the Matter of Numbering Resource Optimization; Telephone Number Portability; Western Wireless' Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, CC Docket No. 99-200, CC Docket No. 95-116, DA 03-3744, 18 FCC Rcd 24692, 2003 FCC LEXIS 6537 (rel. November 24, 2003) (subsequent history omitted).

[100] Eligible schools and libraries receive support to obtain eligible services, including telecommunications services, at discounted rates.

[101] High cost support enables carriers with above average costs to recover some of these costs from the support mechanisms.
(footnote continued)

[102] In order to qualify for these programs, a person must participate in one of the following programs: national school free lunch program; Low Income Home Energy Assistance Program (LIHEAP); Medicaid; Temporary Assistance to Needy Families (TANF); Supplemental Security Income (SSI); Federal Public Housing Assistance or Section 8; Food Stamps: or a person's annual household income must be at or below 135% of the federal poverty guidelines.

[103] Rural health care support provides rural health care providers the opportunity to purchase telecommunication services at comparable urban rates.

[104] Penetration rate is based on the Current Population Survey conducted by the Census Bureau that estimates how many households in the U.S. have telephone service.

[105] See *IURC Universal Service and Access Reform Docket*, Cause No. 40785, 1997 Ind. PUC LEXIS 22 (Prehearing Conference Order on Role of Commission's Agent and Other Matters Approved July 2, 1997). See also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, 1997 FCC LEXIS 5786 (First Report and Order, rel. May 8, 1997) (subsequent history omitted).

implementing federal USF programs in time to meet federal deadlines.[106]

Continuing FCC Preemption of IURC Authority

Regardless of whether new state legislation is passed, the IURC's role in regulating Indiana's telecommunications industry has already changed. With the passage of TA-96, the majority of IURC telecommunications dockets involved implementing and enforcing industry compliance with TA-96 and the FCC's changing regulatory requirements.[107] In contrast, during the last few years, the only state statute which has generated an increasing number of telephone utility petitions is the Indiana small telephone utility opt-out statute[108] - and those petitions have all been granted.[109]

Due to the increasingly federal focus of telecommunications regulation, the OUCC is devoting additional resources to FCC proceedings to ensure Indiana's voice is heard by policy makers shaping federal policy. Ongoing changes in federal law will continue to drive future state telecommunications proceedings and policies, regardless of any state legislation to further deregulate Indiana's telecommunications industry.

Issues before the FCC Potentially Impacting Indiana Consumers

Pre-emption of the Indiana State Do Not Call List

Several FCC dockets raise the same central issue: Should states be able to pass do-not-call laws more restrictive than the federal rules?[110] The Indiana

[106] See *IURC Universal Service and Access Reform Docket*, IURC Cause No. 40785: 1997 Ind. PUC LEXIS 238 (Order Approving Discount Matrix for Schools and Libraries under Federal Universal Service Program, July 9, 1997); (Order re Use of State Specific Forward Looking Economic Cost Model, Approved August 4, 1997); 1997 Ind. PUC LEXIS 354 (Order on Forward Looking Economic Cost Models, Federal Universal Service Lifeline/Link-Up Programs, and Certification of Eligible Telecommunications Carriers, Approved November 5, 1997); 1997 Ind. PUC LEXIS 312 (Order on USF Schools and Libraries Program and the Indiana High Cost Fund, Approved December 30, 1997); 1998 Ind. PUC LEXIS 98 (Order on Petition for Reconsideration of Cost Model Order, Approved January 21, 1998); 1998 Ind. PUC LEXIS 468 (BCPM Cost Model Order Approved April 23, 1998); and 1998 Ind. PUC LEXIS 336 (Order on Comparability and Affordability Approved September 16, 1998) (subsequent history omitted).
See also IURC ETC proceeding, IURC Cause No. 41052, 1997 Ind. PUC LEXIS 355 (Order Approved November 6, 1997). Note that Cause No. 41052 has 48 sub-dockets that address specific LEC requests for Eligible Telecommunications Carrier ("ETC") designation, permitting those LECs to receive high cost funding and other federal universal service support.
See also IURC Federal High-Cost Support proceeding, IURC Cause No. 42067, 2001 Ind. PUC LEXIS 331 (Order Approved August 22, 2001); 2001 Ind. PUC LEXIS 331 (Order Approved August 22, 2001); 2001 Ind. PUC LEXIS 472 (Certification Order Approved September 26, 2001); 2002 Ind. PUC LEXIS 503 (Certification Order Approved September 11, 2002); 2003 Ind. PUC LEXIS 267 (Certification Order Approved September 17, 2003); 2004 Ind. PUC LEXIS 227 (Certification Order Approved August 24, 2004); 2004 Ind. PUC LEXIS 355 (*Nunc pro tunc* Order Approved November 10, 2004).

[107] Ind. Code § 8-1-1-2(g).

[108] Ind. Code § 8-1-2-88.5.

[109] See, e.g., Smithville Telephone's opt-out proceeding, IURC Cause No. 42697, 2005 Ind. PUC LEXIS 208 (Order Approved June 15, 2005). See also Geetinsville Telephone's opt-out proceeding, IURC Cause No. 42810 (Order Approved August 10, 2005).

[110] See, for example, CG Docket *02-278*

Attorney General's Office (IN-AG) and the OUCC have filed comments with the FCC in support of Indiana's tougher standards. If the FCC disagrees with the positions advanced by the OUCC and the IN-AG, the state may be forced to follow federal standards. The federal do-not-call law has more exceptions than the Indiana law and more telemarketing calls may reach Indiana residents.

Truth-In-Billing

The National Association of State Utility Consumer Advocates (NASUCA) has asked the FCC to prohibit telecommunications carriers from imposing monthly line-item charges, surcharges, or other fees on consumer bills unless such charges have been expressly mandated and monitored by a state PUC or by the FCC.[111] Since Indiana does not have remarkably strong billing rules, federal billing standards, like those requested by NASUCA, would help Indiana consumers better understand their phone bills and better equip them to comparison shop for the phone service that best meets their needs and budgets.

Other FCC Issues Important to Indiana

Certain issues seem to remain perpetually before the FCC in various forms. These include universal service funding and implementation, inter-carrier compensation, carrier disputes, area code numbering, consumer protection issues, and balancing state rights against uniform federal standards when applying rules to emerging technologies.

Federal Legislative Action

The Ensign Bill
1996 Telecommunications Act Rewrite

Senator John Ensign (R-Nevada) introduced Senate Bill 1504 (the "Broadband Investment and Consumer Choice Act") on July 27, 2005. The bill calls for deregulation of the telecommunications industry. The following are among the key provisions of the bill:

- Prohibits municipalities from charging fees for the issuance of construction permits to install or upgrade telecommunications facilities;
- Eliminates all rate regulation for phone or video service, with special requirements imposed on BLS;
- All consumer protection rules will be adopted by the FCC, with state commissions responsible for enforcement of the provisions;
- Service quality standards will be determined by the FCC and enforced by the states;
- Broadband is defined as anything greater than 64 kilobits/second; and
- Sets monetary amounts for violations of service standards at $50 per violation with a maximum fine per household of $500. Notably, money collected through this fine will not go into state or federal coffers. It will be

[111] SCG Docket No. 04-208 and NASUCA v FCC, No. 05-11682-D (11th Cir.)

paid directly to the consumers who are impacted by the failure to comply with standards established by the FCC.

1996 Telecommunications Act Rewrite Other Initiatives

In response to calls for the provisions of TA-96 to be updated and refined, a U.S. Congressional House Energy and Commerce Committee staff group is in the process of drafting a Telecommunications Act rewrite bill. Versions of similar re-write legislation are being drafted by the Senate Commerce, Science and Transportation Committee staff, as well as White House staff. Regardless of which legislation might be passed, changes implemented by any rewriting of TA-96 will undoubtedly and significantly impact Indiana's telecommunications industry as well as the entire national telecommunications landscape.

Other Legislation

As with every Congressional session, other legislative initiatives are being proposed which have the potential to significantly affect Indiana's telecommunications industry. A summary of federal legislation pending before the US House and the US Senate that could potentially affect the Indiana telecommunications industry can be found in Attachment 1.

Summary

While federalism has always required a delicate balance between state and federal authorities, in recent years the FCC has assumed an active role in telecommunications regulation. Recently, the FCC has requested comments on issues that raise the question of whether regulatory responsibility for telecommunications should rest with states or federal legislators and to what extent the industry should be regulated. Uniform federal standards are favored by industry since it simplifies interstate commercial administration, but granting all authority to federal decision makers renders state legislators and regulators helpless to establish tougher standards to protect their consumers. At the same time, both chambers of Congress are considering legislation that would address issues such as:

- funding, regulating, and developing broadband,
- funding and use of universal service funds,
- protecting privacy and personal information, and
- preventing internet fraud and scams.

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Chapter 5 – Indiana's Commitment to a Statewide Broadband Environment

Broadband is available to customers in a variety of options depending on availability. Customers can receive broadband through DSL, Cable, Wi-Fi (wireless), Satellite, and BPL. The term "broadband" generally refers to high-speed Internet connections transmitting data at speeds greater than 200 kilobytes per second (Kbps), compared to the 56 Kbps maximum speed offered by traditional dial-up connections. While traditional dial-up access (using normal voice telephone line technology) suffices for many consumers, some prefer or need much faster connections technological advances now allow.

The OUCC is committed to the expansion of high-speed Internet availability to businesses and residential consumers throughout the state.

National Broadband Numbers

According to the FCC, as of June 2004 there were 179,942 Digital Subscriber Line (DSL), 304,866 Cable, and 34,706 other Broadband provisioned access lines in Indiana.[112].

Although many ILECs reference a "growing list of competitive, broadband platforms," including wireless, satellite, Broadband over Power Line (BPL), etc., some consider these alternate providers nothing more than niche players at present and, as such, cannot realistically be considered as viable challengers to DSL and cable modem providers serving mass market broadband consumers. There is some market data clearly supporting this position. According to the FCC High Speed Service report,[113] as of June 2004, satellite and wireless carriers combined accounted for just 1.3% of the total high-speed lines supplied to residence and small business users – more than a 50% reduction from the 2.8% market share held in December 1999[114] - while cable modem and DSL lines have increased by 27.6 million since December 1999. In that same four and one-half year period, all other service providers have added just 700,000 lines.[115]

[112] See http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend605.pdf

[113] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, High-Speed Services for Internet Access: Status as of June 30, 2004 (December 2004) ("High-Speed Service Report")

[114] Id.

[115] Id. "All other service providers" include providers of wireline technologies other than DSL ("including traditional telephone company high-speed services and symmetric DSL services that provide equivalent functionality"); providers of optical fiber to the subscriber's premises; and providers of satellite and fixed wireless systems. High-Speed Service Report, Note 2 (for Tables 1-4 and Charts 1-8).

The newcomers in the competitive broadband market – 3G wireless and BPL – are so limited in their availability at present, their numbers are not figured in for consumer broadband services market share calculations. Currently, they're considered little more than emerging technologies and only potential competitors at this time.[116]

Indiana Broadband Numbers

Availability and demand continue to grow in Indiana. The number of high-speed Internet access lines in the state increased by more than 50 percent in 2004.[117] However, broadband access is more limited in some areas as is access to competing broadband providers. Business and residential users alike are using broadband to increase their productivity and enhance their use of the Internet. Broadband allows access to a wide variety of wholesale and retail e-commerce transactions as well as activities like telemedicine, entertainment, and research. Much like highways, basic utility services and schools, high-speed Internet access is now seen as a vital piece of a community's infrastructure impacting both economic development and the quality of life.

DSL/Cable Modem Broadband

DSL and Cable continue to be the dominant methods of choice for broadband in the United States. Both DSL and Cable are available in most metropolitan areas and are slowly expanding into less urban areas. An examination of the market share of residential versus business high speed lines from 2000 through mid-year 2004 (Chart 5-1 – Residential vs. Business High Speed Line Market Share Comparison) shows corresponding increases and decreases in coaxial cable usage versus asymmetrical DSL usage with little change in alternative provider provision within the high speed DSL market.

Even when comparing ILEC versus CLEC provisioned DSL, there has been a marked decrease since 2000 (ref Graph 5-1, DSL Market Share – December 2000, and Graph 5-2, DSL Market Share – June 2004[118]).

Pricing by the four largest telephone companies and four largest cable companies in January 2005 showed DSL services from the ILECs remain cheaper than cable modem services but cable offerings were based on more bandwidth.[119]

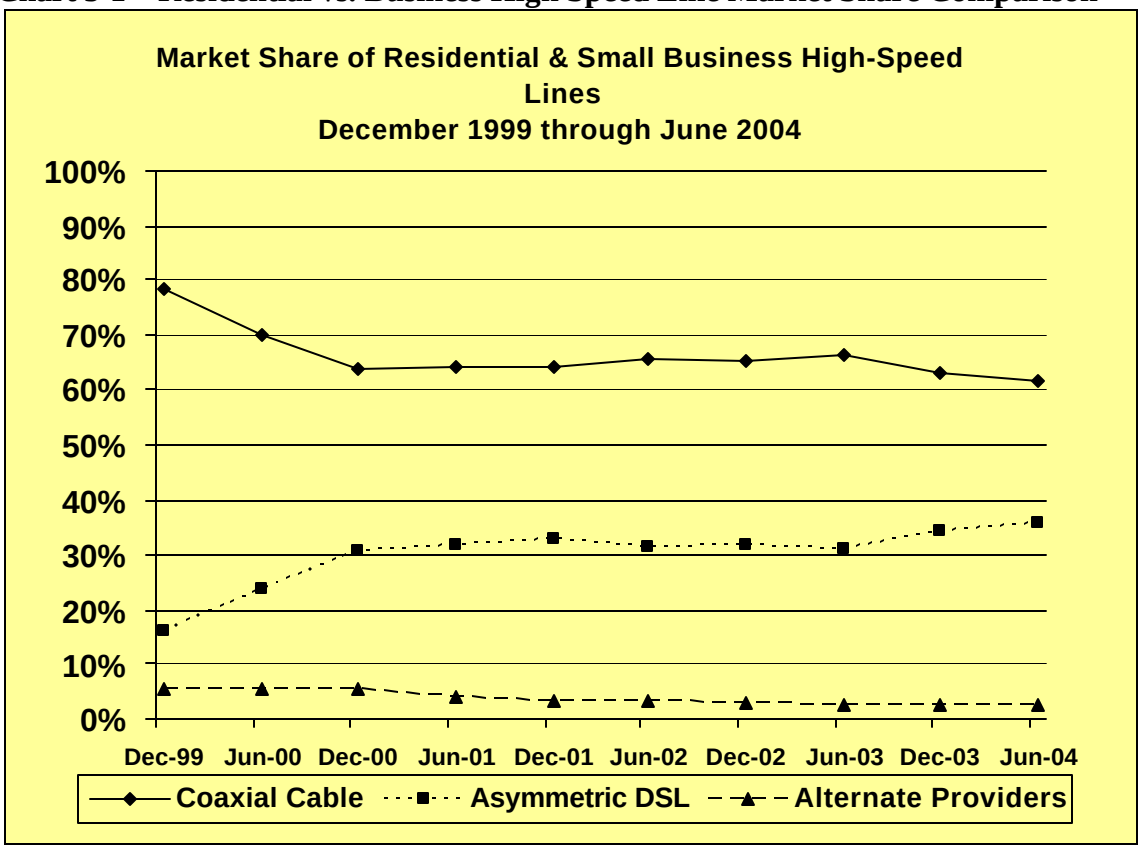
[116] Fourth Report to Congress on Availability of Advanced Telecommunications Capablility in the United States, 19 FCC Rcd 20540 (2004) ("Fourth Section 706 Report") at 20-23.

[117] High-Speed Services for Internet Access - FCC Report (status as of 12-31-04)

[118] Source: FCC, Common Carrier Bureau, Industry Analysis Division, "High-Speed Services for Internet Access: Subscribership as of December 31, 2000," Table 4: High-Speed Lines by Type of Provider as of December 31, 2000, and FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "High-Speed Service for Internet Access: Status as of June 30, 2004," Table 5: High-Speed Lines by Type of Provider as of June 30, 2004.

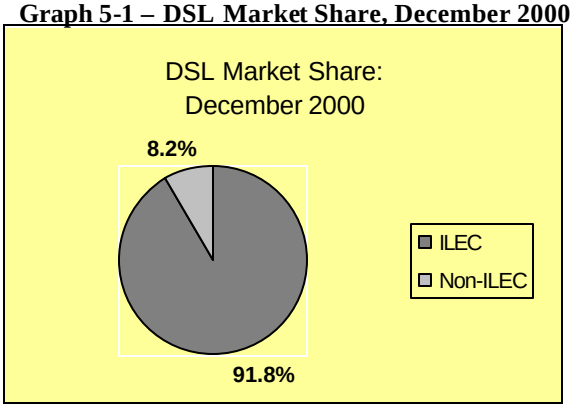
[119] DSL, Cable Broadband Prices Diverge, Carol Wilson, January 31, 2005, Telephony Online

Chart 5-1 – Residential vs. Business High Speed Line Market Share Comparison

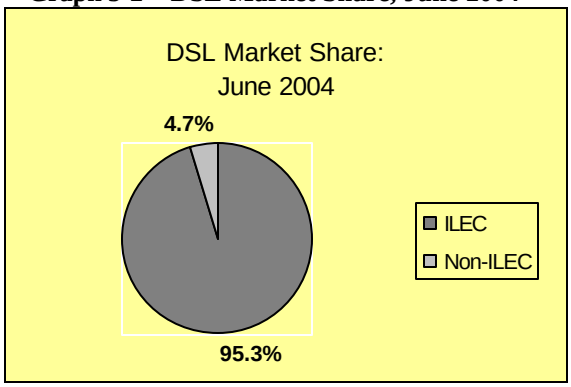


Source: *High-Speed Services Report*.[120]

Graph 5-1 – DSL Market Share, December 2000



Graph 5-2 – DSL Market Share, June 2004



[120] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, High-Speed Services for Internet Access: Status as of June 30, 2004 (December 2004) ("High-Speed Service Report")

Table 5-1 – DSL VS Cable Pricing, January 2005

Company	Speed (in bits per second upstream × downstream)	Solo Price (in dollars)	Bundled Price
BellSouth			
Lite	256K × 128K	$34.95	$24.95 to $32.95*
Ultra	1.5M × 256K	$42.95	$32.95 to $40.95
Xtreme	3M × 384K	$54.95	$44.95 to $52.95
Qwest			
Choice DSL	256K × 256K	$31.99	$26.99
Choice DSL Deluxe	1.5M × 896K	$44.99	$39.99
SBC			
Yahoo DSL Express	1.5M × 384K	$26.95	$19.95
Yahoo DSL Pro	3.0M × 768K	$36.99	$36.99
Verizon			
Online DSL	1.5M × 768K	$34.95	$29.95
Online DSL Premium	3.0M × 768K	$44.95	$39.95
Cablevision			
Optimum Online	up to 10M	$49.95**	$44.95
Cox			
Value	256K × 256K	$24.95	
Preferred	4.0M × 512K	$49.95	$39.95
Premier	5.0M × 768K	$64.95	$54.95
Comcast			
Hi-Speed Internet	3.0M × 256K	$42.95***	
Add-on for Speed	4.0M × 384K	$52.95	
Time Warner			
Road Runner		$44.95	
Road Runner Premium	6.0M × 512K	$84.95	$64.95 to $69.95
* The lower prices go to those who buy unlimited long-distance service from BellSouth, the higher to those who buy voice features.			
** This price is for those who buy only basic cable.			
*** This price is for those who buy only basic cable			

Both groups offered discounts based on purchase of other services, although here again, the ILEC offerings tend to be cheaper. The one anomaly was Cox Communications, which not only offered

a very telephone-like symmetric 256Kbps service at only $24.95 per month but also featured a 4 Megabyte bit per second (Mbps) by 512Kbps (download vs. upload speed) Cox Preferred service as part of a bundle for $39.95 per month[121].

In today's market, phone companies rely heavily on service bundles packaging voice, high-speed data, and entertainment services at competitive prices to hold at bay the cable competitors.

Table 5-1, DSL VS Cable Pricing, January 2005, was compiled by Telephony Online in January 2005 to show a comparison of rates and service offerings between DSL and Cable providers[122].

Wireless Fidelity (Wi-Fi) Broadband

Wi-Fi networks are simply wireless networks running under the 802.11b standard. The newest system, Wi-Fi 5 operates in the 5 MegaHertz (MHz) band and can offer speeds of up to 54 Mbps.

It's hard to gauge how many consumers utilize wi-fi technology today. As an example, T-Mobile revealed in June 2005 nearly 500,000 consumers are currently signed up to access T-Mobile hotspots with hourly, daily, monthly or yearly accounts.[123] In the past twelve weeks alone, over 450,000 people nationwide used high-speed Internet access at locations such as coffee shops, airports and hotels. The total number of T-mobile Wi-Fi log-ins nationwide reached 3 million in the March-May 2005 timeframe compared to approximately 8 million for all of 2004.

Although many early Wi-Fi users were business travelers using laptops in airports, hotel rooms and lobbies, the demographic is now far broader, with students, music fans, backpackers, silver surfers and others hitting the hotspots with their PDAs, smart phones and laptops.

One major advantage of Wi-Fi systems is a new architecture for wireless LANs combining Gigabit Ethernet switching, Wi-Fi technology, and new "smart" antennas. This new architecture allows Wi-Fi switches to send and receive multiple transmissions simultaneously, significantly extending the range of Wi-Fi systems.

Wi-Fi continues to see good growth as many cities around the country contract with providers to implement "Hot Spots" for wireless high-speed Internet service. A hotspot is defined as any location in which 802.11 (wireless) technology exists and is available for use to consumers. In some cases the wireless access is free, and in others, wireless carriers charge for usage. Wi-Fi hot spots continue to expand and enter into different areas each year allowing the technology to be used to help consumers in their pursuit of work-based or recreational Internet usage.

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[121] Id

[122] Id

[123] *T-Mobile Wi-Fi Usage Soars*, Mike Slocombe, June 14, 2005, Digital-Lifestyles.Info E-mag, accessed August 31, 2005.

Wi-Fi vs. Bluetooth

Because Wi-Fi and Bluetooth technologies work under different protocols, appliances using Wi-Fi technology are not interoperable with those using Bluetooth technology. Bluetooth and Wi-Fi are different in a number of ways and should not be considered in competition.

The biggest difference between the technologies is that Wi-Fi technology boasts faster data transfer speeds and range, making it a good replacement for Ethernet systems, while Bluetooth requires less power and is prominent in small systems, such as PDAs.

Broadband Over Power Lines

BPL subscription and availability is still rather low throughout the country and has yet to become a major player in the broadband community. The technology travels in shortwave frequencies similar to those used by amateur radio operators, sending and receiving signals over the same wire carrying consumer's electricity. The concept for the consumer is simple: Plug a computer into a special Internet modem which, in turn, plugs into a wall socket, and the consumer is connected. Regenerator units attached to the powerline every half-mile filter out static and boost the signal. Most BPL systems operate at up to 500 Kbps – 10 to 20 times faster than dial-up, similar to DSL, but slower than cable. However, recent new technology could allow BPL systems to come very close to cable speeds. More than 40 field trials of BPL systems are currently underway across the country, with Manassas, Virginia being the leader – having offered it commercially for about a year.

Electric utilities are joining long-distance telephone carriers and cable television companies in a rush to expand high-speed Internet service. But many rural areas have been left out, hampering people wanting to work from home, students doing homework online, and businesses needing to communicate with customers and suppliers.

At least three BPL providers in Indiana are in the concept, developmental, and/or testing phases.

In November 2004, South Central Indiana REMC in Martinsville, Indiana launched a pilot BPL project.

Cinergy is also testing the technology and its experiment is thought to be the largest in the nation. Launched as a pilot in May 2004, Cinergy outfitted more than 40,000 homes in the Cincinnati area with the equipment by the end of 2003. If tests go well, Cinergy hopes to expand the service into Indiana in late 2005 or early 2006.

Lebanon Utilities planned to introduce the service by mid-summer 2005 in the Boone County community and compete with similar services offered by telephone and cable firms.

Broadband Over Gas Lines (BGL)

Nethercomm Corporation announced in August 2005 the company had developed a technology to broadcast data wirelessly through active natural

gas pipelines safely and reliably using the private spectrum isolated in the lines.

Using ultra-wideband transceivers, the company transmits the signal through the pipeline to compatible ultra wideband transceivers located in the consumer's location. The company believes they can provide Cable Television, High-Definition Television (HDTV), Phone service (using VoIP technology), broadband internet access, Wi-Fi and Wi-Max service, and a variety of other services using this technology. The company is planning a pilot project which could potentially include 1,000 homes.[124]

The advantages of such a technology would be fast, robust, and reliable service enabling the full use of the broadband spectrum. The major disadvantage of the technology is that availability is limited to consumers who have a natural gas connection to a servicing hub. However, over 63 million residences currently receive natural gas through connected pipeline networks. It's important to keep in mind this technology is in an early development stage and has yet to become a proven broadband option for customers.

Satellite Broadband

Satellite usage is relatively low due to high costs (up to $500 per household for single point installation[125] as well as $50-$100 per month for service)[126] and low performance characteristics. However, this option is often the only source for broadband provision in remote or deep rural locations where no other service options are available.

Speed – Does It Matter?

Access speeds increase with new technology improvements. However, in an effort to afford perspective, Table 6-2, Broadband Speed Comparison, gives an overview of the average time required to download specific activity examples using Internet access services (assuming optimal conditions)[127].

[124] *Wireless Broadband in Gas Lines, Natural or Needless*, Josh Long, Carrier Channel, See http://www.phoneplusmag.com/articles/571carrier02.html, accessed August 12, 2005.

[125] Directway installation costs for a Model DW6000 Modem with Ethernet Output and a .74 meter dish

(footnote continued)

[126] http://www.broadbandbuyer.com/charthome.htm

[127] University of Texas study, (LBJ School of Public Affairs Policy Research Project)

Table 5-2 – Broadband Speed Comparison

Internet Functions	Dialup (56K)	Satellite (512K)	DSL (1M)	Cable (1M)	Wireless (5M)
An e-mail	1 sec.	<1 sec.			
A basic Web page (25K)	10 sec.	<1 sec.			
One Five-Minute Song (5M)	15 min.	2 min.	1 min.		40 sec.
One Two-Hour Movie (500M)	20 hrs.	4 hrs.	2 hrs.		70 min.

Indiana Broadband Deployment in the ARPs

Through the ARP settlements, the three largest ILECs in Indiana agreed to achieve broadband deployment goals by the end of each settlement.

SBC Broadband Deployment

Under the current ARP agreement, SBC has agreed to deploy high speed services to at least 77% of SBC Living Units by June 30, 2008. By June 30, 2006, SBC committed to deploy high-speed services to 71% of SBC living units or the percentage of SBC living units as of December 31, 2003 plus 2%. Additionally, SBC committed to at least 30% of the high-speed services infrastructure deployed to living units pursuant to the ARP agreement from December 31, 2003 to June 30, 2008 would be in rural areas as defined in the agreement.

Verizon Broadband Deployment

Under the current ARP agreement, Verizon has agreed to deploy high speed services to at least 65% of Verizon exchange access lines by June 30, 2006, with a further commitment to deploy High-Speed Service (HSS) to 73% of Verizon exchange access lines by December 31, 2007. Additionally, Verizon committed that at least 40% of the increase in high-speed capable exchange access lines would be in rural areas as defined in the agreement.

Additionally, Verizon agreed to deploy "Stand-Alone HSS" service over the term of the agreement for all Verizon HSS-capable exchange access lines in Indiana by December 31, 2005. Verizon "Stand-Alone HSS" is defined as access to high speed services (e.g., DSL) without a requirement for the customer to also subscribe to voice communications service.

However, Verizon may have already achieved the broadband goals of its ARP. As stated in its 2003 annual report, Verizon "extended the reach of [its] high-speed DSL service and grew [its] customer base by almost 40 percent…".[128] As of December 31, 2003, approximately 80% of Verizon's lines were DSL-qualified.[129]

Moreover, Verizon has further proclaimed the widespread deployment of fiber optics, Internet switches and other next-generation technologies to better equip its network to support the

[128] Verizon 2003 Annual Report. See http://investor.verizon.com/2003annual/newworld/newworld5.shtml, accessed August 28, 2005.

[129] Verizon 2003 Annual Report. See http://investor.verizon.com/2003annual/financials/mda8.shtml, accessed August 28, 2005.

simultaneous transfer of voice, data and video.[130]

Sprint Broadband Deployment

Under the current ARP agreement, Sprint agreed to deploy high speed services to at least 50% of Sprint exchange access lines by January 1, 2006, with a further commitment to deploy high-speed services to 70% of Sprint exchange access lines by December 31, 2008.

Other Broadband Deployment in Indiana

RLEC Broadband deployment

With few exceptions, Rural Local Exchange Carriers (RLECs) in Indiana have deployed broadband services to greater than 75% (and in some cases approaching 100%) of their consumers, offering state-of-the-art high speed, reliable broadband communications at affordable prices.

In some cases, RLECs also offer "all-in-one" packages including phone service, broadband service, and television service using new fiber-optic networks laid to the consumer's locations rather than to distribution points in the local area. In many cases, these new fiber-optic networks are not only put in place for new developments, but are also being overlaid to replace aging copper networks.

Wireless technology is also being employed by some RLECs to offer remote rural consumers access to the same services enjoyed by more suburban or metropolitan consumers – again, at very affordable and competitive prices.

Municipal Broadband Deployment and Issues

Increasingly, Indiana communities such as Scottsburg are either looking into or have begun providing broadband services to their populations through the use of municipal-owned and operated networks typically utilizing fiber-optic or wireless technology.

Economic and educational development for citizens of rural counties is contingent upon being able to offer state-of-the-art telecommunications systems. Competition with the private sector telecommunications industry is not the aim. Rather, municipalities look to provide advanced services and systems at affordable rates when the major telecommunications companies are 1) only willing to provide them at competitive prices; 2) postpone the provision of them until more profitable urban markets have been built out; or 3) are unwilling to offer the services altogether. In light of these types of circumstances, municipal entry into the market directly facilitates business and industry recruitment and retention, enhances economic development, and improves the quality of education and employment opportunities for its citizens.

Secondly, municipal entry into the market is the quintessential example of

[130] Verizon 2003 Annual Report. See http://investor.verizon.com/2003annual/newworld/newworld5.shtml, accessed August 28, 2005.

local communities working to help themselves, rather than rely on state or federal assistance. In terms of economic development, the provision of high-speed telecommunications services is as essential for rural communities as the provision of water and sewer lines.

Thirdly, municipal entry can potentially spur private telecommunications providers to offer the services at more reasonable rates. Recent studies have indicated competition tends to grow, not lessen, in communities offering municipal networks, offering citizens greater choice. Thus, the local government "competitive threat" may serve to lower costs and enhance the benefits which result from private competition and multiple providers.

Finally, municipal utilities generally have the infrastructure in place to provide communications services or to lease facilities to other providers. Doing so makes more efficient use of such infrastructure and is economically efficient, since municipal utilities tend to be located in areas which are unserved or underserved by competitive providers.

I-LIGHT

I-Light is an extreme high-speed optical fiber network connecting Indiana University, Bloomington (IU); Indiana University–Purdue University, Indianapolis (IUPUI); and Purdue University, West Lafayette; to each other. The I-Light system also connects all three campuses to the national Internet infrastructure, including Internet2.

Discussion for the optical fiber network began in 1998. A $5.3 million state appropriation to IU and Purdue was approved by the Indiana General Assembly in 1999. Construction of the network began in the spring of 2001 with network installation concluded in November 2001. In December 2001, I-Light was launched and Indiana became the first state in the nation to have such a network fully operational.

Few other states have Indiana's geographical advantage when it comes to tapping into existing fiber pathways/crossroads. Indianapolis is the home to the Internet2 Abilene Network Operations Center, managed by IU on the IUPUI campus, as well as the site of the Indiana GigaPoP, one of Internet2's regional network aggregation points. IU and Purdue University manage the optical fiber network and are responsible for their respective connections to IUPUI. University ownership of the optical fiber infrastructure is a key advantage of I-Light, representing a long-term investment by the State in research infrastructure which provide enough networking capacity for the next 10 to 20 years between IU and Purdue's three main research campuses and the national optical fiber infrastructure.

Chapter 6 – The Good, the Bad and the Ugly – Why We Need Strong Consumer Protection Laws

With competition, Indiana consumers gained access to new telecommunications services and service providers. But when telephone markets began opening to new competitors, consumers were also exposed to new types of telephone fraud. The OUCC has responded to combat telephone fraud by prosecuting unlawful practices and by informally assisting and educating consumers in protecting themselves from telephone scams.

Wireline Fraud Continues

The two most common threats consumers face today with wireline fraud are "slamming" and "cramming." However, consumers – especially those using dial-up Internet service – are increasingly finding themselves the victims of a variation of cramming with more insidious repercussions – "modem hijacking".

"Slamming" is the practice of switching a telephone customer's service provider to another carrier without the customer's permission.

"Cramming" is the practice of placing unauthorized charges on a customer's telephone bill.

"Modem hijacking" – a variation on cramming – occurs when software is downloaded onto a consumer's computer over the Internet (without the consent of the consumer) which causes the consumer's dial-up modem to place toll calls without the user's knowledge.

Under federal law, Section 258 of TA-96 prohibits slamming of interstate services but does not protect consumers from cramming or from local-service slamming. In response to increased incidents of slamming and cramming reported after telephone markets were opened to competition under TA-96, the General Assembly enacted new consumer protections in 1998 to protect Indiana consumers from cramming and local-service slamming.[131] This anti-slamming/anti-cramming statute authorized the OUCC to prosecute offending companies in proceedings before the IURC[132] in which violators may be fined up to $2,500 per offense.[133]

The OUCC witnessed a sharp decline in the number of reported slamming and cramming complaints after state fining authority was granted to the IURC. Since 1998, the OUCC has only had to pursue formal investigations of eight

[131] Ind. Code 8-1-29-1, *et seq*.

[132] See, Ind. Code 8-1-29-7.

[133] See, Ind. Code 8-1-29-7.5. That represents the first direct fining authority delegated to the IURC. Previously, the IURC could only petition state courts to impose penalties when utilities failed to comply with governing laws. See Ind. Code 8-1-2-115.

companies for violating Indiana's anti-slamming/anti-cramming laws. Cases that have already been resolved resulted in voluntary settlement agreements that refunded customer payments, limited the companies' operating and marketing authority, required telemarketing reforms, called for "voluntary" payments into the Indiana General Fund and, in one case, called for payments into a fund dedicated to helping low-income consumers pay their winter heating bills.

Given its track record, Indiana's anti-slamming/anti-cramming statute appears to be meeting its purpose – giving the IURC meaningful enforcement authority that deters slammers and crammers and protecting Indiana consumers. However, wrongdoers continue seeking new ways to "work the system." For example, in recent cases, companies accused of cramming have argued they are not subject to Indiana's anti-slamming/anti-cramming statute because they only provide deregulated services such as directory assistance, billing services for other companies, or Internet-based services. In fact, while slamming has become much rarer, the OUCC has seen a recent increase in cramming. As a result, the OUCC has initiated four cramming investigations in the last twelve months alone, all of which are pending.[134]

Further, with the blending of Internet and telephone service options – and as these services have been increasingly deregulated – the OUCC has seen an increase in the number of Internet-based cramming complaints such as modem hijacking. Due to the complexity of tracking and identifying individuals committing Internet-based fraud, the OUCC's Telecommunications and External Affairs Divisions are investigating new ways to protect Indiana consumers. Steps the OUCC has already taken include forming alliances with consumer advocates in other states, the FCC, the Federal Trade Commission, and federal and international law enforcement agencies. In addition, the OUCC is working with several of Indiana's local telephone companies, whose expertise has proven invaluable in ongoing consumer protection efforts.

Wireless Fraud

Cellular fraud (cell fraud) - defined as the unauthorized use, tampering, or manipulation of a cellular phone or service - is also becoming more prevalent.

Cell Phone Cloning

The Wireless Telephone Protection Act of 1998 was passed specifically to combat cell phone cloning. This act expanded prior law to criminalize the use, possession, manufacture or sale of cloning hardware or software.

Every cell phone has a unique factory-set electronic serial number (ESN) and telephone number (MIN). A cloned cell phone is one which has been reprogrammed to transmit the ESN and MIN belonging to another (legitimate) cell phone. Valid ESN/MIN

[134] See IURC Cause No. 41546-SC-05, -06, and -07 involving Micronet and HT Teleservices. See also IURC Cause No. 41546-SC-08 involving OCMC and USBI.

combinations can be obtained by illegally monitoring the radio wave transmissions from the cell phones of legitimate subscribers. Once cloned, both the legitimate and the fraudulent cell phones have the same ESN/MIN combination and cellular systems cannot distinguish a cloned cell phone from a legitimate one. The legitimate phone user then gets billed for the cloned phone's calls.

Subscriber Fraud

Late in 2003, the primary type of cell fraud seen by the FCC was subscriber fraud. The cellular industry estimated in that year carriers lost more than $150 million per year due to subscriber fraud.[135]

Subscriber fraud occurs when someone signs up for service with fraudulently-obtained customer information or false identification. Lawbreakers obtain your personal information and use it to set up a cell phone account in your name.

Spam

More and more consumers are receiving spam over their cell phones – voice and message text calls received without the consumer's consent. Not just annoying, these transmissions cost the consumer money, since each spam incident uses minutes.

The FCC established a Do Not Call list to fight spammers and some states are considering similar moves.

VoIP Fraud

VoIP abuse is inevitable. Alerts have already been issued regarding multiple weaknesses with the existing VoIP protocols and one of the worst nightmares for VoIP proponents is the death of the system at the hands of hackers and virus writers. Even ignoring any worst case scenario, vulnerabilities still exist in any VoIP system.

IP Network Susceptibility

Hackers can launch large-scale denial of service attacks, congesting the network with illegitimate traffic and preventing e-mails, file transfers, Web site requests, and – increasingly – voice calls from getting through.

Network Node Susceptibility

System nodes – IP phones, broadband modems and network equipment (soft switches, signaling gateways, media gateways) – remain susceptible to attack. Theoretically, an attack could be launched allowing an individual to eavesdrop on conversations, interfere with audio streams, or disconnect, reroute or even answer other people's phone calls. Not only is this type of an attack a concern to call centers putting both voice and data traffic on a single IP network, it is a major concern for 911 PSAPs.

[135] Information obtained from FCC Consumer Advisory Fact Sheet, Cell Phone Fraud, updated by the FCC on 10/06/03

Spim, Spit, and Phishing

In January 2002, approximately 17% of e-mail was considered spam. That percentage has climbed today to 93% or more of email in unprotected accounts. New techniques could impact VoIP. Spammers now use "spim" (Spam over Instant Messaging) with regular and annoying frequency – approximately 10% of instant-messaging traffic is classified as spim.

"Spit" (Spam over Internet Telephony) may be just around the corner. The ability to send out telemarketing voicemail messages as easily as blanket e-mails already exists and the capability to do so over a VoIP system must be an appealing economic option to spammers. Aside from the annoyance factor, potential strains on any network when hundreds or thousands of 100K or larger voicemail messages are transmitted (as opposed to 5- or 10K e-mails) could be significant.

Consumers could also see an increased incidence of the audio equivalent of phishing – unscrupulous individuals sending out mass mailings of well-crafted voicemails pretending to be financial institutions in attempts to get personal financial information from the unwary.

Consumer Education

In addition, the OUCC engages in informal consumer protection efforts. Since 1996, the OUCC has devoted significant resources to consumer education and outreach, striving to arm consumers with the knowledge they need to quickly resolve fraud-based billing problems and guard against future offenses. The agency distributes thousands of consumer protection fact sheets[136] at the Indiana Black Expo Summer Celebration, Indiana State Fair, and other events each year. The OUCC Web site also educates consumers on ways to prevent or remedy incidents of slamming or cramming.

[136] A sample OUCC fact sheet can be seen at www.IN.gov/oucc/pdf/slamming.pdf.

Chapter 7 – As We Move Forward - Service Quality in Indiana

Service quality in the wireline telecommunications industry in Indiana is currently regulated under the IURC while wireless and emerging technologies service quality is governed at the Federal level. This disparity creates an uneven playing field in the telecommunications industry in Indiana – at times requiring wireline carriers to abide by stricter standards than wireless or VoIP. It is a situation which cannot be remedied unless and until measures are taken to ensure high service quality standards are implemented in Indiana which

a. Are technologically neutral,
b. Apply to all carriers provisioning service in Indiana, and
c. Ensure consumers will have a high quality, reliable network to depend on in any deregulated environment.

Performance Measures

Currently, eight (8) performance measures are used when evaluating or comparing service quality statistics between companies within Indiana and when comparing Indiana to other states. Those measures are:

• Business Office Average Speed of Answer (BASA) – Indiana requires telephone company business offices to answer the phone within 60 seconds.

• Repair Center Average Speed of Answer (RASA) – Indiana requires telephone company repair centers to answer the phone within 60 seconds.

• Trouble Reports per 100 Lines (Statewide Average) (TRSA) – Indiana allows an average of less than five trouble reports per 100 lines for any given carrier in any given exchange for any three consecutive months.

• Trouble Reports per 100 Lines (By Exchange) (TREX) – Indiana allows an average of less than five trouble reports per 100 lines for any given carrier on a statewide basis.

• Out-of-Service Trouble Reports Cleared within 24-hours (OOS) – Indiana requires a carrier to maintain an average of 92% of all trouble reports cleared within 24 hours of notification.

• Primary Access Lines Installed within Five (5) Business Days (PALI) – Indiana requires a carrier to maintain an average of 92% of all primary access lines installed within 24 hours of request.

• Repair Premise Appointments and Outside Commitments Met (RPAC) – Indiana has no requirement for carriers to consistently meet all repair appointments scheduled by the carrier with the consumer.

• Installation Premise Appointments and Commitments Met (IPAC) – Indiana has no requirement for carriers to consistently meet all repair appointments scheduled by the carrier with the consumer.

A Regional Comparison

In a comparative analysis of service quality standards[137] within the region (defined as Indiana, Illinois, Michigan, Wisconsin, Ohio, and Kentucky), the OUCC found Indiana ranked third overall behind Michigan and Ohio. Table 7-1, Regional Comparison, summarizes that analysis.

TABLE 7-1 – REGIONAL COMPARISON

P.M.	IN	IL	KY	MI	OH	WI
BASA	1	1	5	4	3	5
RASA	5	5	1	3	4	2
TRSA	3	5	6	2	1	3
TREX	1	3	2	3	3	3
OOS	5	3	6	1	2	3
PALI	3	4	4	1	1	6
RPAC	3	3	3	1	1	3
IPAC	3	2	3	3	1	3
Score	32	30	26	38	40	28
Rank	3	4	6	2	1	5

OUCC Ranking Process: States are awarded 6 pts for a number 1 ranking, 5 pts for 2nd, 4 pts for 3rd, 3 pts for 4th, 2 pts. For 5th, and 1 pt for a 6th place ranking. Overall ranking based on cumulative score.

In this regional comparison Indiana ranked last or next to last in two key measures considered important to consumers: *Repair Center Average Speed of Answer* and *Out-of Service Trouble Reports Cleared within 24 hours.*

[137] Service Quality standards for each state as of January 1, 2005 were used in all analysis within this chapter.

A National Comparison

Compared to states nationally and specifically against the sixteen states with deregulated telecommunications industries – Alabama, Florida, Idaho, Iowa, Missouri, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Vermont – the OUCC found for each measure:

- Business Office Average Speed of Answer (BASA) – Indiana ties for 28th in the nation. Missouri currently requires business offices to answer all calls within 15 seconds while Texas allows 20 seconds. Twenty states require a percentage of calls (usually between 80 and 95%) to be answered within 20 seconds. When compared to the deregulated states, Indiana ranks 12th. Only Ohio has a lower standard, while Idaho, North Dakota, South Carolina, and South Dakota have no standard for this measure.

- Repair Center Average Speed of Answer (RASA) – Indiana ties for 35th in the nation. Rhode Island currently requires repair center offices to answer all calls within 14 seconds while Massachusetts and Missouri each allow 15 seconds. Again more than twenty states require a percentage of calls (between 75 and 92%) to be answered within 20 seconds. When compared to the deregulated states, Indiana ranks 13th. Only Ohio has a lower standard, while Idaho, North and South Dakota have no standard for this measure.

- Trouble Reports per 100 Lines (Statewide Average) (TRSA) – Indiana

ties for 12th in the nation. Maine allows a standard of 1.08 trouble reports per 100 lines, while Massachusetts is slightly more lenient at 1.9 trouble reports per 100 lines. When compared to the deregulated states, Indiana ranks 4th. Ohio and Texas allow only three (3) trouble reports per 100 lines on a statewide average, while Vermont allows four. Alabama and Indiana have the same standard.

• Trouble Reports per 100 Lines (By Exchange) (TREX) – Indiana ties for 12th in the nation. Oregon allows a standard of less than 2 trouble reports per exchange average, while Texas will allow less than 3 per exchange average. When compared to the deregulated states, Indiana ranks 6th. Oregon, Texas, Iowa, Tennessee, and Alabama maintain stricter standards.

• Out-of-Service Trouble Reports Cleared within 24 hours (OOS) – Indiana ranks 15th in the nation. New Jersey and Pennsylvania have 100% requirements, while West Virginia's standard of 100% is implied. Several states require 100% compliance within 30-36 hours and some have 100% requirements with conditions. When compared to the deregulated states, Indiana ranks 4th. Pennsylvania and Ohio maintain a 100% standard while Florida requires that a standard of 95% be maintained.

• Primary Access Lines Installed within Five (5) Business Days (PALI) – Indiana ranks 12th in the nation. Michigan and Ohio have 100% standards, while Wyoming has an implied 100% standard. All states ranking higher than Indiana have at least a 95% standard. When compared to the deregulated states, Indiana ranks 5th. Ohio maintains a 100% standard while Pennsylvania, Texas, and Utah all have standards greater than 95%.

• Repair Premise Appointments and Outside Commitments Met (RPAC) – With no standard, Indiana ranks in a tie for last in this category.

• Installation Premise Appointments and Commitments Met (IPAC) – With no standard, Indiana ranks in a tie for last in this category.

Indiana's ranking nationally and against states which have deregulated telecommunications industries is summarized in Table 7-2, Indiana National Service Quality Rankings.

Table 7-2 – Indiana National Service Quality Analysis

Rank	BASA	RASA	TRSA	TREX	OOS	PALI	RPAC	IPAC
1	Missouri	Missouri	Ohio	Oregon	Pennsylvania	Ohio	Alabama	Ohio
2	Texas	Texas	Texas	Texas	Ohio	Pennsylvania	Ohio	Florida
3	Alabama	Alabama	Vermont	Iowa	Florida	Texas	Pennsylvania	Missouri
4	Nebraska	Nebraska	Alabama	Tennessee	**Indiana**	Utah	Texas	Alabama
5	Iowa	S. Carolina	**Indiana**	Alabama	Texas	**Indiana**	Florida	Oregon
6	Pennsylvania	Iowa	Pennsylvania	**Indiana**	Alabama	Florida	Missouri	Pennsylvania
7	Oregon	Oregon	S. Carolina	S. Carolina	Idaho	Alabama	Idaho	Tennessee
8	Vermont	Pennsylvania	Missouri	Nebraska	Missouri	Missouri	**Indiana**	Texas
9	Florida	Vermont	Tennessee	Missouri	Iowa	Iowa	Iowa	Utah
10	Utah	Florida	Florida	Florida	S. Carolina	S. Carolina	Nebraska	S. Carolina
11	Tennessee	Utah	Idaho	Idaho	Vermont	Tennessee	N. Dakota	Idaho
12	**Indiana**	Tennessee	Iowa	N. Dakota	Tennessee	Oregon	Oregon	**Indiana**
13	Ohio	**Indiana**	Nebraska	Ohio	Utah	Vermont	S. Carolina	Iowa
14	Idaho	Ohio	N. Dakota	Pennsylvania	Oregon	Idaho	Tennessee	Nebraska
15	N. Dakota	Idaho	Oregon	S. Dakota	Nebraska	Nebraska	S. Dakota	N. Dakota
16	S. Carolina	N. Dakota	S. Dakota	Utah	N. Dakota	N. Dakota	Utah	S. Dakota
17	S. Dakota	S. Dakota	Utah	Vermont	S. Dakota	S. Dakota	Vermont	Vermont

No Standard as of January 1, 2005 – ranked alphabetically

Existing service quality standards as of January 1, 2005 – ranked from most stringent to least

Chapter 8 – Safety First – Indiana's 9-1-1 Environment

Contrary to other nationwide provisioned security and safety systems, 9-1-1 service is fundamentally provided at the local level with emergency services in many ways operationally unique from one PSAP to the next. There are more than 6,000 Public Safety Answering Points (PSAPs) nationwide, each governed by different state and local laws, each potentially different in the configuration for wireline and wireless system provision, and all at differing levels of service provision sophistication. In many cases, there are significant differences in the agreements each PSAP may have with the local provisioning ILEC.

The provision of 911 service is a critical safety and security concern, at the national level, at the state level, and at the county level. Unlike the daily provision of electric, water, or gas utility service, the provision of 911 service almost always involves life or property threatening circumstances in which the deployment of emergency services is timed in minutes and seconds.

Wireline 9-1-1 Provisioning

In a typical set-up, the Wireline 911 Network includes a Selective Router, the trunk lines between the Selective Router and the PSAP, the Automatic Location Information (ALI) database, the Selective Router Database (SBDB), the trunk lines between the ALI database and the PSAP, and the Master Street Address Guide (MSAG). When a 911 call is received from a LEC central office dedicated trunk, the Selective Router, after querying an incumbent LEC-maintained SRDB to determine the proper PSAP serving the caller's geographic area, will route the call to the correct PSAP. Additionally, Automatic Number Identification (ANI) data are also forwarded to the PSAP by the Router. The PSAP systems uses the ANI information to access an incumbent LEC-maintained Automatic Location Information (ALI) database, which will give the caller's physical address (previously verified by comparison to the separate MSAG database). With the ANI and ALI information at hand, the PSAP then directs the proper emergency response units to the caller's location.

Automatic Number Identification (ANI)

Automatic Number Identification (ANI) is the system utilized by the telephone companies to identify the Directory Number (DN) of a calling subscriber. ANI serves a function similar to Caller-ID, but utilizes different underlying technology. Additionally, although Caller-ID can be blocked by prefixing a call with a *67, ANI is usually impossible to block. ANI was originally developed for telephone company billing purposes, but is now offered to commercial customers who might benefit from knowing who may be calling them. ANI is also one of the core technologies employed by the 911 emergency system. It is usually

transmitted in-band using multi-frequency signaling. However, it can also be transmitted separately if you have an ISDN PRI.

Automatic Location Identification (ALI)

Automatic Location Identification (ALI) provides an address display of the subscriber calling 911. The ALI display includes the subscriber's address, community, state, type of service, and, if a business, the name of the business. The PSAP will also get a display of the associated Emergency Service Number (ESN) information for police, fire, or rescue.

Enhanced 911 Service

Phase One

Wireless Phase I technology allows the 911 dispatcher to see the wireless telephone's call back number and the location of the cell tower that is closest to the caller.

While this enhanced technology makes it possible for dispatchers to return the call if the wireless signal is lost or interrupted, it offers little to no information about the caller's location. A single cell tower, particularly in a rural area, may serve more than 100 square miles of a carrier's service area, doing little to help locate a caller in an emergency.

Nine wireless carriers offer Phase I coverage in at least part of their Indiana service areas. Cingular Wireless and Verizon have deployed Phase I coverage throughout their service areas.

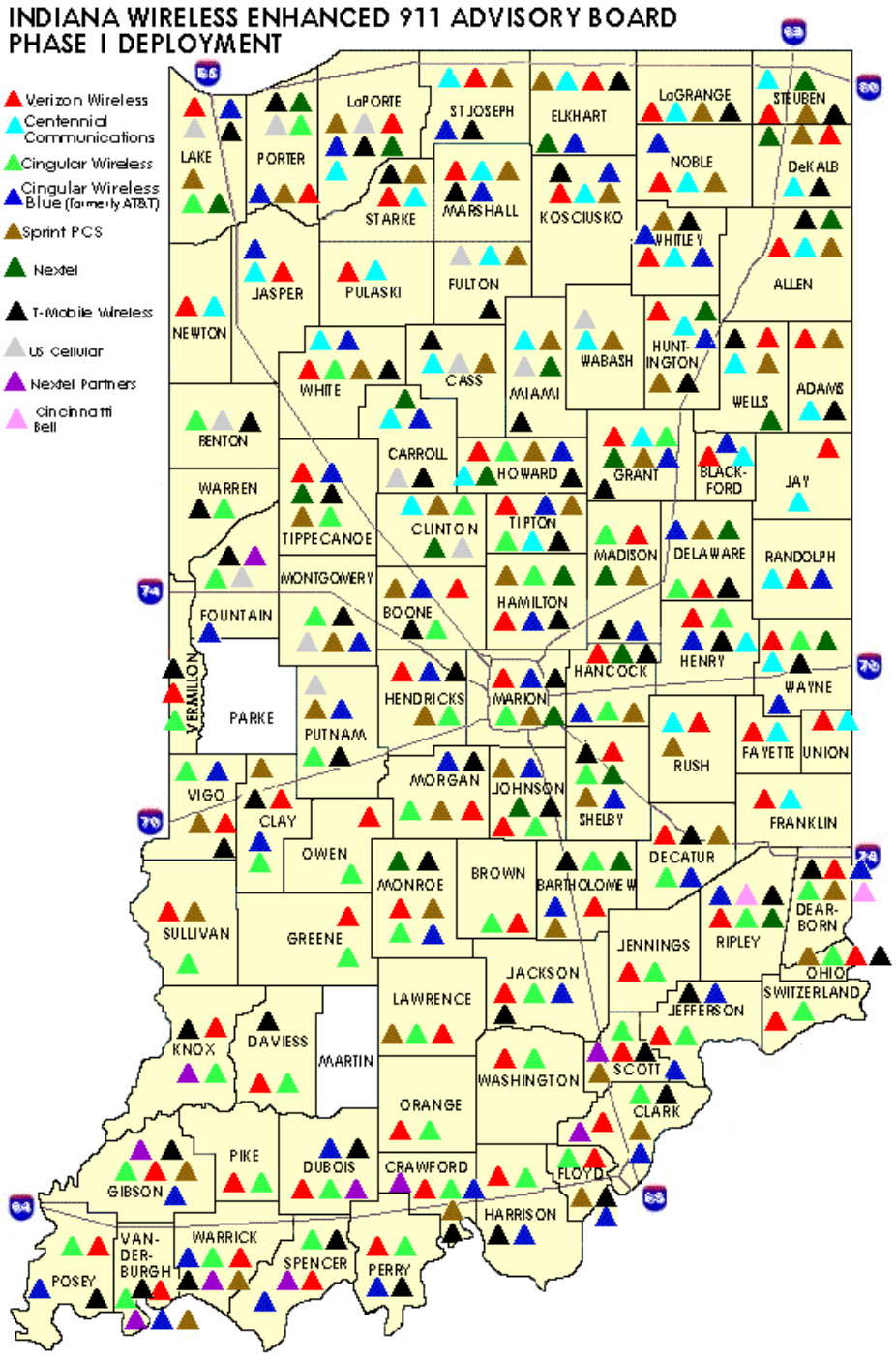
According to the Indiana Wireless Enhanced 911 Advisory Board Web site, Phase One service has been deployed to 90 of 92 or 98% of counties in Indiana (reference Map 8-1, Phase I Coverage, Indiana).

Phase Two

Wireless Phase II technology allows the 911 dispatcher to see the wireless telephone's call back number and the location of the caller by latitude and longitude within a few hundred feet. This enhanced location technology is mandated by the Federal Communications Commission, and wireless companies are working to implement Phase II coverage gradually (reference Map 8-2, Phase II Coverage, Indiana).

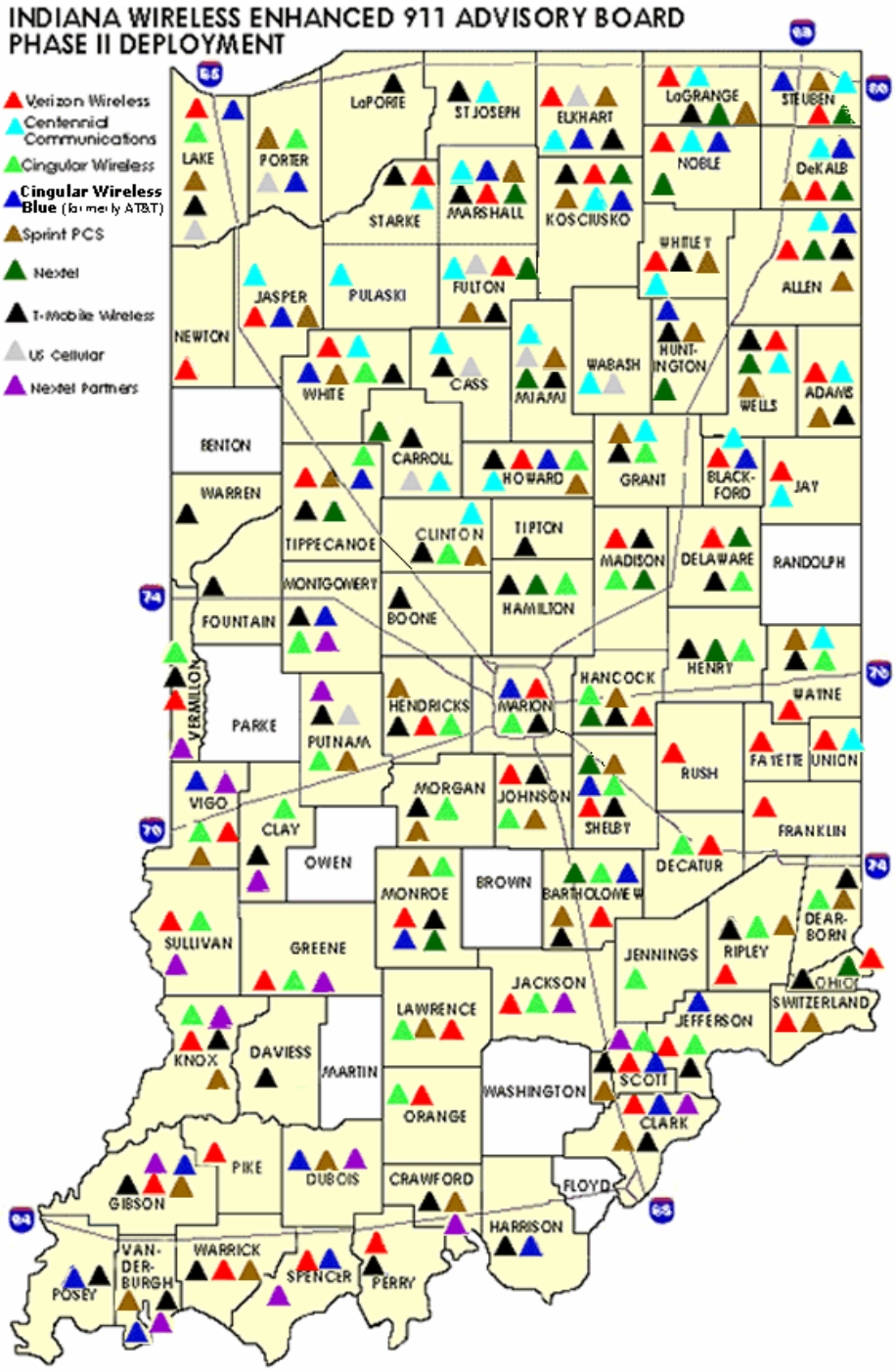
According to the Indiana Wireless Enhanced 911 Advisory Board website, Phase Two service has been deployed to 84 of 92 (or 91.3%) of counties in Indiana (reference Map 9-2, Phase II Coverage, Indiana).

Map 8-1 – Phase I Coverage, Indiana [138]



[138] Map obtained from http://www.911coverage.org/coverage.htm. Accessed August 29, 2005.

Map 8-2 – Phase II Coverage, Indiana [139]



[139] Map obtained from http://www.911coverage.org/coverage.htm. Accessed August 29, 2005.

911 Issues in Indiana

1. Lack of a Competitive Market. As of August 1, 2005, SBC provides 911 service to 57% of the 180 current Public Safety Answering Points (PSAPs) in Indiana, with the remaining 43% split between Verizon (31%) and Sprint (12%). Currently, the OUCC is not aware of any other local exchange carrier offering 911 provision to the PSAPs. Wireless systems and VOIP-style systems are not technologically capable at present to offer inter-modal competition in the provision of 911 service to PSAPs.

2. 911 Surcharge Fees. Currently, the Indiana Code authorizes counties to establish 911 surcharge levels in accordance with rate cap parameters, which vary from county to county. Wireless 911 surcharges are established by the State and the county receives a portion of that surcharge, again based on a number of factors. At present, wireline revenue appears to be declining as a result of decreasing wireline penetration rates. Some counties are seeing as little as a 2% decline while others may be seeing as much as a 10% decrease per year.

3. Rates. Rate increases are not in themselves an issue, when accomplished in a reasonable manner. However, dramatic annual rate increases (300% or more) without a capability to gradually adjust to such a significant hike creates significant hardship on the PSAPs and counties. Some counties are using county general funds to continue provisioning 911 service while others now consider critical points where decisions may be necessary regarding how much 911 service can be maintained. For some counties, those critical points could be as early as 2008.

4. Lack of effective CLEC reporting. PSAPs operate in large part from revenue generated by the 911 tax on consumer's phone bills. CLECs which do not quickly and effectively coordinate with county Emergency Management Agencies or agencies providing 911 service create a loss of revenue which potentially can be significant. The issue becomes more exacerbated when a CLEC is collecting the 911 tax, but does not pass the revenue generated by the tax to the appropriate PSAP.

5. Database inaccuracy. Proper and effective dispatch of emergency service personnel in any emergency is highly dependent on having the correct address information at hand to deploy emergency units to. Since the PSAP is the frontline for responding to emergency or terrorism events, it depends on the ANI/ALI information contained in the data stream of the phone call to route emergency responders quickly to the scene of the emergency or event. If ANI/ALI information is either incorrect or is completely missing, the deployment of critical response elements cannot be accomplished in a timely manner, potentially resulting in a loss of life. Consequently, the databases from which ANI/ALI information is derived must be accurate at all times.

There have already been incidents where an emergency call from a citizen of one

community was routed to the police department of another community. Even though police units were eventually routed to the proper address, the final response to the emergency situation was minutes later than had the calls been routed correctly in the first place.

If the ALI database had been correct, the original caller's phone number would have been properly associated with the correct street address and town, so that proper emergency dispatch could have been accomplished. Because the database could not have been properly maintained for an error of this magnitude to have happened, critical response was delayed several minutes, an issue that could mean life or death in other circumstances.

6. VoIP 911. Tragically and usually unconsciously, when individuals face threats to themselves, their families, or their property, the first instinct is to dial 911. They may not, in the "heat of the moment," remember or may not even know the VOIP provisioned phone they're using doesn't provide 911 service. A key facet of the public health, welfare, and safety benefit to a nationwide 911 service requirement (and baring that, an Indiana statewide policy as a minimum) is that it protects not only the consumer paying for the service, but also their children, family members and social guests, or, in the case of a business, their customers and employees.

FCC ACTIVITIES REGARDING 911 SERVICE

VoIP 911 Initiatives

On May 19, 2005, the FCC adopted rules which require the interconnected VOIP providers to (1) deliver all 911 calls to the customer's local emergency operator; (2) give emergency operators the call back number and location information of their customers where the emergency operator is capable of receiving it; and (3) inform their customers of their E911 capabilities and limitations of the service.

The following is taken from FCC Public Notice DA 05-2085, released July 26, 2005: "On June 3, 2005, the FCC released an Order[140] requiring interconnected VOIP service providers[141] to provide E911 capabilities to their subscribers no later than 120 days from the effective date of the Order, July 29, 2005, or 30 days from the date of publication in the Federal Register[142].

[140] *IP-Enabled Services and E9-1-1 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 2005 WL 1323217, FCC, (rel. Jun 3, 2005) *(VOIP E9-1-1 Order)*

[141] "Interconnected VOIP service" refers to an interconnected Voice Over Internet Protocol (VOIP) service which (1) enables real-time two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users to generally receive calls that originate on the Public Switched Telephone Network (PSTN) and to terminate calls to the PSTN.

[142] 70 Fed. Reg. 37,273 (June 289, 2005)

Additionally, as set forth in the *VOIP E9-1-1 Order*, by July 29, 2005, all providers of interconnected VOIP service must:

a. Specifically advise each new and existing subscriber, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VOIP service or may be in some way limited by comparison to traditional E911 service;

b. Obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in the paragraph above; and,

c. Distribute to its existing subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VOIP service. Each interconnected VOIP provider should distribute such warning stickers or other appropriate labels to each new subscriber prior to the initiation of that subscriber's service.[143]"

The FCC determined it would not initiate enforcement actions against any provider of interconnected VOIP service until August 30, 2005 concerning the requirement to obtain affirmative acknowledgement from every new and existing customer, on the condition the provider file a detailed report with the FCC not later than August 10, 2005. However, the FCC also fully expected all providers of interconnected VOIP services disconnect any subscribers from whom the provider had not received an affirmative acknowledgement on or before August 29, 2005.

While the FCC has imposed requirements for the provision of 911 service by VOIP providers, some national-level VOIP providers are skeptical concerning their ability to meet FCC 911/E-911 requirements. Vonage CEO Jeffrey Citron has stated Vonage may seek a waiver of FCC VOIP 911 provision requirements, claiming compliance is "hard and it's expensive"[144]. Regarding Vonage's compliance with the FCC Order, Citron added "I know we won't; it's not possible."[145] Pulver.com's Free World Dialup (FWD) now encourages its members to purchase programs which provide connectivity to the PSTN via the Pulver affiliate LibreTel.[146] LibreTel identifies itself as "a pulver.com company".[147] FWD members who also subscribe to LibreTel for a fee can obtain connectivity to the PSTN via NANPA numbers in cities in 20 different area codes throughout the United States. Regretfully, no area codes currently on

[143] *VOIP E9-1-1 Order* at pp 48, 73; see also 47 C.F.R. §9.5(e).

[144] EH, *Today's News*, Communications Daily, June 9, 2005.

[145] *Id*

[146] See http://www.freeworlddialup.com (accessed August 9, 2005)

[147] See http://www.libretel.com/index.php (accessed August 9, 2005)

the LibreTel site are available for cities in Indiana.

Wireless 911 Initiatives

The FCC requires all wireless providers to achieve a target goal of 95% of all customer wireless phones being capable of identifying the location of a caller to 911 or other emergency services no later than December 2005.

At least one company, Nextel, plans to ask the FCC for a waiver from the December 2005 deadline. Nextel claims it could take up to an additional two years to achieve the 95% goal, but the company expects to have 70% of consumer's phones compliant by the end of 2005 and 80-85% of the merged Sprint-Nextel customer phones to be compliant. (Note: Nextel plans to ask for the waiver in September 2005). Nextel is claiming the maker of its handset, Motorola, has had to build in the capability from scratch and has been dealing with a programming issue which caused all Motorola handsets equipped with A-GPS to quit transmitting ALI in mid-2004. Consequently, in addition to maintaining production numbers for future handsets, Motorola was forced to also repair millions of already-deployed handsets to bring them into compliance. In addition, Nextel must convince customers with non-A-GPS handsets to purchase an A-GPS equipped handset. For customers unwilling to relinquish their old handset – a handset which may very well be fully functional with the existing system except lacking an A-GPS capability – for any of a number of reasons, this could prove problematic in meeting an FCC-mandated deadline. It becomes even more of an issue for both Nextel and the consumer if the consumer is required to bear any portion of the cost for a replacement handset.

Other FCC 911 Initiatives

In an FCC news release, dated July 25, 2005, the FCC announced it had established a Joint Federal/State VOIP Enhanced 911 Enforcement Task Force. Staff from both the FCC and state public utility commissions will serve as members, to work closely with representatives from the public safety community. That community would include the Association of Public Safety Communications Officials (APCO), as well as the National Emergency Numbering Association (NENA).

The Task Force was created by the FCC to facilitate a timely and effective enforcement of the FCC VOIP rules. Members of the Task Force will research developing educational materials to ensure consumers are fully aware of their rights and the industry requirements of the new FCC VOIP E-911 Order. The Task Force will also examine how best to expedite compliance and facilitate enforcement, when and where necessary. Additionally, the Task Force will compile data for research, as well as share best practices among members.

Chapter 9 – Learning from Others – A Summary of Deregulation Initiatives in Other States

Within the last two years, fifteen state governors have signed measures approved by their state legislatures authorizing some form of deregulation for the telecommunications industry. Nebraska has not regulated retail telecommunications services since 1986. The Connecticut Legislature passed telecommunications deregulation legislation in 2005. However, the Governor vetoed the bill.

California, New York, and Colorado continue deregulation discussions in open dockets before their respective commissions while the Oklahoma PUC studies telecommunications deregulation at the request of its State Legislature. Georgia passed legislation in 2005 establishing a committee to look into deregulation.

During the early part of 2005, eleven other state legislatures considered proposals to implement deregulation. However, the legislation did not pass in those states.

The remaining twenty states which have not seen initiatives to deregulate the telecommunications industry still regulate the rates and tariffs of their telecommunications utilities in some manner. Specifically, Hawaii, New Hampshire, and Washington still regulate telecommunications utilities under traditional rate of return regulation, while large telecom utilities in the remaining seventeen states have some sort of relaxed regulation (price caps, rate freezes, and pricing flexibility). Small telecommunications provider regulation in these twenty states range from fully regulated to fully deregulated.

As we examine enacted deregulation legislation in several states, we find the legislation in these states contains common threads. Among the commonalities:

- Successful legislation tended to have items benefiting both the utilities and the consumers.

- Most legislation contained language relaxing regulation of utilities' vertical rates and competitive service rates. However, in some cases, vertical service deregulation was accompanied by restrictions on price increases.

- Of the sixteen states which enacted telecommunications deregulation, ten retained some form of jurisdiction over BLS rates for single line residential and business consumers. Examples are BLS rates subject to price caps (North Dakota); caps on increases (Idaho); and BLS rate increases tied to availability of DSL to all exchanges (Iowa).

- Many enacted measures deregulated rates for bundles and packages, while Utah requires the utility to continue to

offer components of bundles/packages on a stand alone basis.

Even when we compare deregulation bills signed into law with legislation which did not pass, we find some commonalities. Again, some of these common threads are:

- Most legislation removed all services from regulation except for BLS.

- Most legislation exempted Broadband services and VoIP from commission jurisdiction.

- Some legislation established service quality standards telecommunications utilities must continue to meet.

Deregulation legislative efforts in other states continue to recognize the inter-modal competitive environment in the telecommunications industry. Specifically, legislative initiatives recognizing VoIP, Broadband, and Wireless as emerging technologies and exempting them from Commission jurisdiction were passed in Ohio and Nebraska. The PUCs in Missouri, Ohio, and Oregon were given authority to continue regulation, relax regulation, or deregulate services and exchanges experiencing competition, while the Oregon and Texas PUCs were given authority to review services deemed competitive and determine if the competitive conditions still exist.
Some legislation allowed Commissions to retain jurisdiction over consumer complaints and service quality issues. North Dakota and Utah require service quality requirements to be applied equally for all telecommunications service providers. Texas and Pennsylvania require other state agencies to help in the promotion of lifeline.

In addition to these main issues, there were a host of individual issues addressed in state-specific legislation. Florida and Pennsylvania placed restrictions on local governments wanting to provide broadband. Texas legislation establishes the Commission as franchising authority for state issued cable and video franchises, requires development of a wholesale code of conduct, and allows the establishment of audio newspapers. Pennsylvania legislation allows the PUC to oversee continuation and modification of Network Modernization Plans.

Attachment 2, Summary of State Deregulation Efforts, details the efforts for each state and the status of those deregulatory initiatives[148].

[148] Information for Attachment 2 obtained in part from "State Retail Rate Regulation of Local Exchange Providers as of September 2004", Lilia Perez-Chavolla, National Regulatory Research Institute, November 2004.

Chapter 10 – Putting It All Together As We Move Forward

As we approach the 2006 legislative session, a number of issues must be considered in any legislative efforts to deregulate the telecom industry in Indiana.

The OUCC offers Table 10-1, Indiana Telecommunications Regulatory Policy Assessment, which contains a list of key traditional regulatory functions of Indiana telecommunications policy. In the table, the OUCC identifies goals served by a specific policy or function, and then offers a brief discussion on the viability of the policy or function in a deregulated environment. In each case, the agency assumes continuation of existing federal law, but does not take into account additional requirements which may be imposed by federal law proposed and discussed previously in this report.

The Indiana General Assembly recognized the changing telecommunications environment during the 1985 legislative session. Current Indiana law at the time did not allow for competitive entry. Technological advances coupled with changes in federal law allowed for competitive entry in the provision of long distance telephone service creating a legal conflict between state and federal law. Therefore, Indiana law was modified to recognize the development of competition and created a regulatory process to transition from monopoly regulation of telecommunications service to an environment where competition was allowed and regulation was reduced or eliminated as competition developed. Long distance was about the only competitive service in 1985. However, the statute was written broadly enough to allow for and address competitive entry of any telecommunication service. Over the years there have been many legislative initiatives attempting to improve the 1985 law. However, the suggested changes never garnered sufficient support to be adopted.

Today, the competitive and regulatory environment is much different than it was in 1985. The 1985 law has done its job, creating an environment where competitive providers can come into Indiana and offer innovative services and packages of services to most of Indiana's consumers. Our former monopoly telecommunications providers are no longer protected from competitive entry and as a result are no longer subject to monopoly regulation. Although competitive offerings and providers do not exist 100% across the board in Indiana, we have made significant progress toward that goal.

Is now the right time for the Indiana Legislature to adopt a deregulation statute? Reasonable minds are likely to answer this question in different ways. One thing is certain: Indiana is best served by an answer that (1) considers the mutual interests of providers and consumers; (2) learns from the experience of other states; 3) and remembers that any new environment must address the regulatory goals that are now served by current law as administered by the IURC.

TABLE 10-1 – INDIANA TELECOMMUNICATIONS REGULATORY POLICY ASSESSMENT

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Maintaining Tariffs	**Low**	1. Fair treatment of consumers. 2. Prevents discrimination.	The state may wish to maintain rules requiring notice to consumers prior to the effective date of a price change (e.g., 30 days).	**MAINTAIN** Tariffs for retail services will serve mainly an informational purpose as posted price lists.
Setting Retail Rates	**Medium to low** (except in high-cost areas and/or areas lacking effective competition)	1. Competition surrogate. 2. Ensures fair treatment of consumers. 3. May also ensure reliable, high quality service. 4. Achieves social goals.	Originally a core regulatory function. Envisioned to ensure retail rates remain just and reasonable while allowing the company to meet obligations, deliver reliable, high-quality service. Basic service rates set at affordable levels to promote and maintain high penetration levels. .	**TRANSITORY** While local competition is not firmly established, it may be appropriate to eliminate price regulation with a re-assertion of regulation if prices become unreasonable.

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Price Cap Regulation	**Medium** (except in high cost areas or areas lacking effective competition)	1. Competition surrogate 2. Ensures fair treatment of consumers. 3. May also ensure reliable, high quality service. 4. Social goals.	In Indiana, Alternative Regulation Plans have been used to achieve Price Cap Regulation. ARPs are a step below full deregulation when crafted correctly. While the ARP gives the company more flexibility in setting prices and allows it to increase profits by reducing costs (provided service quality goals are met), provisions for oversight, monitoring and review remain.	**TRANSITORY** While local competition is not firmly established, it may be appropriate to eliminate price regulation with a re-assertion of regulation if prices become unreasonable. In areas without effective competition or in high-cost areas, price ARPs may still be required to control market power, keep basic service affordable, and further universal service goals.
Numbering Issues (Pooling, Conservation, Area Code Assignment, Local Number Portability (LNP))	**Medium**	1. Promote competition	States must continue to enforce number conservation plans and design new area code boundaries when necessary. In addition, LNP rules which include wireline to wireless and wireless portability are competition enhancing or enabling policies.	**MAINTAIN** Oversight of numbering resources is required to maintain the health of the North American Numbering Plan

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
State Universal Service Funds	**High**	1. Ubiquitous deployment 2. Social goal 3. Economic development goals	Universal service has been an important goal of Indiana legislative and regulatory policy to: a. Maintain ubiquitous deployment of the network, b. Ensure rates for basic telephone service remain affordable, and c. Ensure high penetration rates.	**MAINTAIN** Continue as a permanent feature of public policy as long as universal service is an important social goal.
Lifeline and Linkup Programs	**High**	1. Universal service 2. Social goals	Low-income consumers are vulnerable to rising prices. Lifeline and Linkup have proven effective in raising the telephone penetration rates for low-income households, especially when federal Lifeline and Linkup assistance is coupled with effective state assistance.	**MAINTAIN** Continue as a permanent feature of public policy as long as social policy aims to provide targeted assistance to low income households to keep them connected to the network.

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Certification of Eligible Telecommunications Carriers (ETC)	**High**	1. Ubiquitous deployment 2. Social goals 3. Promote competition	The IURC retains primary responsibility to designate ETCs to receive federal universal service support. In certifying them, the IURC also can impose requirements to ensure funds are used only for the provision, maintenance and upgrading of facilities and services for which support is intended.	**MAINTAIN** Should continue as a function of the IURC as long as there are federal and state universal service funds and carriers must be certified to receive support from these funds.
Disconnection/Reconnection Rules	**High**	1. Social goals 2. Consumer protection	Rules are required to determine when customers may be disconnected for non-payment and reconnected after a disconnection.	**MAINTAIN** If the IURC social policy remains aimed at keeping households connected to the network, some oversight and policy will be necessary.
Resolution of Consumer Complaints	**High**	1. Fair treatment of consumers	Consumers with complaints or disputes over service and billing require a forum through which they may seek resolution and redress.	**MAINTAIN**

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Consumer Education	**High**	1. Fair treatment of consumers 2. Promote competition	Consumer education assists the competitive market and reduces the number of inquiries and complaints for issues.	**MAINTAIN**
Service Quality Standards	**High**	1. Ensure adequate reliability and quality of service 2. Economic development	On interconnected networks, perceived service quality equals the lowest level provided on any point in the network. In addition, customers expect high levels of service quality as they rely on networks for an increasing variety of functions. Moreover, any area without reliable, high quality networks will suffer with respect to economic development.	**MAINTAIN**

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Carrier Certification	**High**	1. Promote competition 2. Ensure reliable service	Public policy interest to ensure firms offering telecom services possess adequate financial, managerial, and technical capability to provide adequate reliable service to customers. However, the process should be as simple as possible so as not to raise undue barriers to entry.	**MAINTAIN**
Arbitrating/Approving Interconnection Agreements	**High**	1. Promotes competition	The Act provides "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission." As long as competitors obtain interconnection and other services from ILECs, it's important the IURC ratify those agreements. Bilateral agreements require review to ensure parties are not disadvantaged.	**MAINTAIN**

REGULATORY FUNCTION	IMPORTANCE	GOAL(S) SERVED	RATIONALE	ELIMINATE – TRANSITORY - MAINTAIN
Inter-carrier Compensation	**High**	1. Promotes competition	Carriers will have to interconnect with other carriers networks and develop terms and conditions for those interconnections. The IURC must have jurisdiction to settle disputes which may arise.	**MAINTAIN**
Wholesale Service Quality	**High**	1. Promotes competition 2. Ensures reliable service	High levels of service quality should be expected of networks relied on for an increasing variety of functions. Moreover, any area without reliable, high quality networks will suffer with respect to economic development.	**MAINTAIN**

ATTACHMENT 1

Summary of Federal Legislative Initiatives Potentially Affecting Indiana's Telecommunications Industry

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Attachment 1 – Summary of Federal Initiatives Potentially Affecting Indiana's Telecommunications Industry

House Resolutions are listed in numerical order before Senate Bills. Where proposed legislation has both a Senate Bill and a House Resolution number, the House number will be used as the order designator.

Information Currency Date: September 1, 2005

Number:	**HR 29**
Name:	Securely Protect Yourself Against Cyber Trespass Act or Spy Act
Date Introduced:	January 4, 2005
Sponsors(s):	Bono (CA)
Co-Sponsors(s):	61—including Buyer, IN
Last Action:	May 24, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Makes it unlawful for any person who is not the owner or authorized user of a computer exclusively for the use of a financial institution or the U.S. government, or a computer used in interstate or foreign commerce or communication to engage in unfair or deceptive acts or practices in connection with specified conduct, including: (1) taking unsolicited control of the computer; (2) modifying computer settings; (3) collecting personally identifiable information; (4) inducing the owner or authorized user to disclose personally identifiable information; (5) inducing the unsolicited installation of computer software; and (6) removing or disabling a security, anti-spyware, or anti-virus technology. Provides for enforcement of violations as unfair or deceptive acts or practices and the FTC will to report to Congress.

Number:	**HR 82**
Name:	Social Security On-line Privacy Protection Act
Date Introduced:	January 4, 2005
Sponsors(s):	Rep. Frelinghuysen (NJ)
Co-Sponsors(s):	None
Last Action:	February 9, 2005: referred to the Subcommittee on 21st Century Competitiveness.
Summary:	Prohibits an interactive computer service from disclosing to a third party an individual's Social Security number or related personally identifiable information without the individual's prior informed written consent. Requires such service to permit an individual to revoke any consent at any time.

Number:	**HR 84** and **S 687**
Name:	Online Privacy Protection Act of 2005
Date Introduced:	January 4, 2005 & March 30, 2005
Sponsors(s):	Rep. Frelinghuysen (NJ) & Sen. Burns
Co-Sponsors(s):	None & 4—none from IN
Last Action:	February 9, 2005**:** referred to the Subcommittee on 21st Century Competitiveness & March 30, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Makes it unlawful for an operator of a web site or online service to collect, use, or disclose personal information concerning an individual (age 13 and above) in a manner that violates regulations to be prescribed by the FTC. Requires operators to protect the confidentiality, security, and integrity of personal information it collects from individuals. Requires such regulations to require such operators to provide a process for individuals to consent to or limit the disclosure of such information. States can enforce such regulations by bringing actions on behalf of residents, requiring the State attorney general to first notify the FTC of such action. Authorizes the FTC to intervene in any such action.

Number:	**HR 102**
Name:	Children's Access to Technology Act
Date Introduced:	January 4, 2005
Sponsor(s):	Rep. Green (TX)
Co-Sponsor(s):	None
Last Action:	February 4, 2005: referred to the Subcommittee on Telecommunications and the Internet.
Summary:	Amends TA to allow unexpended universal service funds to be used by schools in low-income areas to acquire information services, including devices necessary to access and use such services.

Number:	**HR 144**
Name:	Rural America Digital Accessibility Act
Date Introduced:	January 4, 2005
Sponsor(s):	Rep. McHugh
Co-Sponsor(s):	None
Last Action:	February 4, 2005: referred to Subcommittee on Telecom and the Internet
Summary:	Goal is to bridge the digital divide in rural areas. Sec of Commerce makes grants or loans up to $100 million, Director of the National Science Foundation to research the issue, and Amends the Internal Revenue Code to provide a tax credit to holders of qualified technology bonds.

Number: HR 146	
Name:	Resolution to establish a grant program to support broadband-based economic development efforts
Date Introduced:	January 4, 2005
Sponsor(s):	McHugh
Co-Sponsor(s):	None
Last Action:	February 23, 2005: referred to the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology.
Summary:	Authorizes the Sec of Commerce to make grants for high-speed telecommunications in regions with low per capita income, high unemployment, or economic adjustment problems that have populations of no more than one million. Limits the maximum assistance for any one region to $1 million.

Number: HR 214	
Name:	Advanced Internet Communications Services Act of 2005
Date Introduced:	January 1, 2005
Sponsor(s):	Rep. Stearns (FL)
Co-Sponsor(s):	Boucher (VA)
Last Action:	February 4, 2005: referred to the Subcommittee on Telecommunications and the Internet.
Summary:	Requires an "advanced internet communications service" to be considered: (1) an interstate service; and (2) neither a telecommunications service nor an information service for purposes of the TA. Prohibits the FCC and states from regulating rates, charges, terms, or conditions relating to "advanced internet communications service", subject to provisions of this Act giving the FCC exclusive authority regarding such service, (e.g. ensure that appropriate E-911 services are available; provide access for persons with disabilities; contribute to the universal service fund; and provide for just and reasonable compensation for use of the public switched telephone network.)

Number: HR 1099 & S 472	
Name:	Anti-phishing Act of 2005
Date Introduced:	March 3, 2005 & February 28, 2005
Sponsor(s):	Rep. Hooley (OR) & Leahy (VT)
Co-Sponsor(s):	Case (HI), Engel (NY) and McCarthy (NY) & Schumer (NY)
Last Action:	May 10, 2005: referred to the Subcommittee on Crime, Terrorism, and Homeland Security & February 28, 2005: referred to the Committee on the Judiciary
Summary:	Amends the Federal criminal code to criminalize Internet scams involving phishing. Imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law.

Number:	**HR 1069 & SB 115 & SB 1326**
Name:	Notification of Risk to Personal Data Act
Date Introduced:	March 3, 2005 & January 24, 2005 & June 28, 2005
Sponsor(s):	Rep Bean (IL) & Sen. Feinstein (CA) & Sen. Sessions (AL)
Co-Sponsor(s):	18-none from IN & none & none
Last Action:	May 13, 2005: referred to the Subcommittee on Financial Institutions and Consumer Credit & January 24, 2005: referred to the Committee on the Judiciary & June 28, 2005, referred to the Committee on the Judiciary.
Summary:	Requires federal agencies, and persons engaged in interstate commerce, in possession of electronic data containing personal information to disclose any unauthorized acquisition of such information; amends the Gramm-Leach-Bliley Act to require financial institutions to disclose to customers and consumer reporting agencies any unauthorized access to personal information; and amends the Fair Credit Reporting Act to require consumer reporting agencies to implement a fraud alert with respect to any consumer when the agency is notified of any such unauthorized access

Number:	**HR 1139** & **S 1350**
Name:	Wireless 411 Privacy Act
Date Introduced:	March 7, 2005 & June 30, 2005
Sponsors(s):	Rep. Pitts (PA) & Sen. Specter (PA)
Co-Sponsors(s):	30—none from IN & 4—none from IN
Last Action:	March 22, 2005: referred to the Subcommittee on Telecommunications and the Internet & June 30, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Protections for Wireless 411. Amends TA to prohibit a provider from including the wireless telephone number of any current subscriber in any wireless directory assistance service (WDAS) database unless the provider: (1) provides a conspicuous, separate notice to the subscriber of the right not be listed in any WDAS; and (2) obtains express prior listing authorization from such subscriber, and that authorization has not been withdrawn. Allows a provider to include the wireless telephone information of any new subscriber in a WDAS only if the provider provides: (1) a conspicuous, separate notice to the subscriber, at the time of entering into a service agreement and at least once a year thereafter, of the right not to be listed in any WDAS; and (2) the subscriber with convenient mechanisms to decline or refuse to participate in any WDAS. Prohibits a provider from charging a subscriber for the exercise of any rights under this Act.

Number:	**HR 1479**
Name:	Rural Access to Broadband Service Act
Date Introduced:	April 5, 2005
Sponsor(s):	Rep. Udall (CO)
Co-Sponsor(s):	Salazar (CO)
Last Action:	May 11, 2005: referred to the Subcommittee on Research
Summary:	Establishes within the Department of Commerce a Rural Broadband Office which will coordinate fed resources relating to expansion of rural broadband technology. Amends the Internal Revenue Code to: (1) permit any qualified broadband expenditure which is paid or incurred by the taxpayer to be treated as an expense which is not chargeable to capital account; and (2) any expenditure so treated to be allowed as a deduction.

Number:	**HR 2418** & **S 1063**
Name:	IP Voice Communications and Public Safety Act of 2005
Date Introduced:	May 18, 2005 and May 18, 2005
Sponsor(s):	Rep. Gordon (TN) & Sen. Nelson (FL)
Co-Sponsor(s):	26—none from IN & 4—none from IN
Last Action:	June 3, 2005: referred to the Subcommittee on Telecommunications and the Internet & May 18, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Directs FCC to establish a set of requirements on providers of IP-enabled voice service to ensure that 911/E-911 services are available to customers of IP-enabled voice service. Requires: (1) non-discriminatory IP provider access to 911 and E-911 services; (2) IP providers to provide to customers a clear and conspicuous notice of the unavailability of 911 and E-911 services; and (3) IP provider and user immunity in the provision and use of 911 and E-911 services to the same extent as local exchange companies and other persons.

Number:	**HR 2533**
Name:	Amendment of Communications Act of 1934
Date Introduced:	May 23, 2005
Sponsor(s):	Cubin (WY)
Co-Sponsor(s):	44—none from IN
Last Action:	June 17, 2005: referred to the Subcommittee on Telecommunications and the Internet.
Summary:	Permanently exempts the USF from the Antideficiency Act

Number:	**HR 2726**
Name:	Preserving Innovation in Telecom Act of 2005
Date Introduced:	May 26, 2005
Sponsor(s):	Rep. Sessions (TX)
Co-Sponsor(s):	Miller (FL)
Last Action:	June 17, 2005: referred to the Subcommittee on Telecommunications and the Internet
Summary:	Prohibits municipal governments from offering telecommunications, information, or cable services except to remedy market failures by private enterprise to provide such services.

Number:	**HR 3140**
Name:	Consumer Data Security and Notification Act of 2005
Date Introduced:	June 30, 2005
Sponsors(s):	Rep. Bean (IL)
Co-Sponsors(s):	14-none from IN
Last Action:	June 30, 2005
Summary:	Amends the Fair Credit Reporting Act (FCRA) to cover communication of personally identifiable information by certain unregulated information brokers who, for compensation, regularly assemble or evaluate personally identifiable information for the purpose of furnishing reports to third parties (thereby bringing them within the scope of FCRA coverage). Imposes an affirmative, continuing obligation upon each consumer reporting agency to respect the privacy of consumers and to protect the security and confidentiality of their nonpublic personal information. Instructs the FTC to promulgate safeguards for the protection of nonpublic consumer information

Number:	**HR 3146** & **S 1349**
Name:	Video Choice Act of 2005
Date Introduced:	June 30, 2005 & June 30, 2005
Sponsor(s):	Rep Blackburn (TN) & Sen. Smith (OR)
Co-Sponsor(s):	35—none from IN & Rockefeller (WV)
Last Action:	July 29, 2005: referred to the Subcommittee on Telecommunications and the Internet & June 30, 2005: referred to Senate Committee on Commerce, Science, and Transportation.
Summary:	Streamlines the franchising process for new marketplace entrance and give American consumers choice over their video and cable service at a lower cost.

Number:	**HR 3503** & **S 936**
Name:	E-Mail Privacy Act of 2005
Date Introduced:	April 28, 2005 & July 28, 2005
Sponsors(s):	Sen. Leahy (VT) & Rep. Cannon (UT)
Co-Sponsors(s):	4—none from IN & Inslee (WA)
Last Action:	April 28, 2005: referred to the Committee on the Judiciary & July 28, 2005: referred to the House Committee on the Judiciary.
Summary:	Amends wiretap provisions of the fed criminal code to revise the definition of "intercept" to mean the aural or other acquisition of the contents of any wire, electronic, or oral communication contemporaneous with transit, or on an ongoing basis during transit, through the use of any electronic, mechanical, or other device or process, notwithstanding that the communication may simultaneously be in electronic storage (thus covering e-mail communications).

Number:	**S 116**
Name:	Privacy Act of 2005
Date Introduced:	January 24, 2005
Sponsors(s):	Sen. Feinstein (CA)
Co-Sponsors(s):	None
Last Action:	January 24, 2005: referred to the Committee on the Judiciary.
Summary:	Prohibits the sale and disclosure of personal information by a commercial entity to a non-affiliated third party unless prescribed procedures for notice and opportunity to restrict such disclosure have been followed. Grants the FTC enforcement authority. Empowers State AGs to enforce and establishes fed injunctive authority regarding any violation.

Number:	**S 687**
Name:	Spy Block
Date Introduced:	March 20, 2005
Sponsors(s):	Sen. Burns (MT)
Co-Sponsors(s):	4—none from IN
Last Action:	March 20, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Makes it unlawful for a person who is not an authorized user of a protected computer (a computer used in interstate or foreign commerce or communication), subject to specified exceptions to: (1) cause the installation of software on the computer in a manner that conceals the fact of installation from the user or prevents the user from knowingly granting or withholding consent; (2) induce an authorized user to consent to installation through materially false or misleading representations; (3) cause the installation of software that cannot be uninstalled or disabled by an authorized user through usual program removal functions; (4) cause the installation of software that includes a surreptitious information collection feature or use such software to collect information; (5) cause the installation of adware without a means of identifying the software source of each advertisement delivered; or (6) engage in other specified unfair or deceptive acts or practices that thwart user control. Authorizes the FTC to issue rules as necessary to implement or clarify the provisions of this Act. Requires violations of this Act to be treated as unfair or deceptive acts or practices under the FTC. Authorizes states to bring civil actions in U.S. District Courts to remedy violations on behalf of its citizens.

Number:	**S 241**
Name:	**Amend section 254 of the Communications Act of 1934**
Date Introduced:	February 1, 2005
Sponsor(s):	Sen. Snowe (ME)
Co-Sponsor(s):	41—none from IN
Last Action:	April 11, 2005: referred to the Committee on Commerce, Science, and Transportation. Hearing held.
Summary:	Amends the TA to make federal provisions which prohibit the obligation or expenditure of funds either in excess of appropriated amounts or in violation of sequestration orders under the Balanced Budget and Emergency Deficit Control Act of 1986 inapplicable to: (1) any amount collected or received as Federal universal service contributions; or (2) the expenditure or obligation of amounts attributable to such contributions.

Number:	**S 497**
Name:	Broadband Rural Revitalization Act of 2005
Date Introduced:	March 2, 2005
Sponsor(s):	Sen. Salazar (CO)
Co-Sponsor(s):	None
Last Action:	March 2, 2005: referred to the Committee on Finance
Summary:	Establishes within the Dept. of Commerce a Rural Broadband Office that will coordinate all federal resources relating to the expansion of rural broadband.

Number	**S 768**
Name:	Comprehensive Identity Theft Prevention Act
Date Introduced:	April 12, 2005
Sponsors(s):	Sen. Schumer (NY)
Co-Sponsors(s):	5--none from IN
Last Action:	April 12, 2005: referred to the Committee on Commerce, Science, and Transportation.
Summary:	Establishes in the FTC an Office of Identity Theft. Authorizes the Office to take civil enforcement actions against covered persons that violate this Act. Sets limits on the sale or transfer of sensitive personal information. Requires data merchants to register with the Office. Establishes within the Office an international directorate devoted to coordinating international responses to identify theft and development of best practices to protect consumers. Sets forth: (1) notification requirements regarding the unauthorized acquisition of, or the intention to share, an individual's sensitive personal information; and (2) penalties for violations.

Number:	**S 810**
Name:	Safeguarding Americans From Exporting Identification Data Act
Date Introduced:	April 14, 2005
Sponsor(s):	Sen. Clinton (NY)
Co-Sponsor(s):	None
Last Action:	April 14, 2005: referred to Committee on the Judiciary
Summary:	Regulates the transmission of personal information to foreign affiliates and subcontractors.

Number:	**S 1004**
Name:	Enhanced Consumer Protection Against Spyware Act of 2005
Date Introduced:	May 11, 2005
Sponsors(s):	Sen. Allen (VA)
Co-Sponsors(s):	3—none from IN
Last Action:	May 11, 2005: referred to the Committee on Commerce, Science, and Transportation.
Summary:	Expresses the sense of Congress that: (1) combating spyware should be established as a matter of high priority for the FTC; and (2) the resources and tools available to the FTC should be enhanced to increase the breadth of the FTC's spyware enforcement efforts. Authorizes state AGs to bring enforcement actions in federal court. Prohibits state AGs from bringing an action under this Act if either the U.S. AG or the FTC institutes an enforcement action.

Number:	**S 1294**
Name:	Community Broadband Act of 2005
Date Introduced:	June 23, 2005
Sponsor(s):	Sen. Lautenberg (NJ)
Co-Sponsor(s):	McCain (AZ)
Last Action:	June 23, 2005: referred to the Committee on Commerce, Science, and Transportation.
Summary:	Amend TA 96 to protect the ability of local governments to provide broadband capability and services.

Number:	**S 1332**
Name:	Personal Data Privacy and Security Act of 2005
Date Introduced:	June 29, 2005
Sponsors(s):	Sen. Spector (PA)
Co-Sponsors(s):	Feingold (WI) and Leahy (VT)
Last Action:	July 1, 2005: Placed on Senate Legislative Calendar under General Orders. Calendar No. 151.
Summary:	An all inclusive legislation that seems to try to touch upon a lot of (all) issues: fraud and related criminal activity in connection with unauthorized access to personal information; organized criminal activity in connection with unauthorized access to personal information; concealment of security breaches involving personal information; aggravated fraud in connection with computers; review and amendment of federal sentencing guidelines related to fraudulent access to or misuse of digitized or electronic personal information; grants for state/local enforcement; data brokers; data privacy and security programs; security breach information; protection of social security numbers; and government access to and use of commercial data.

Number: S 1336	
Name:	Consumer Identity Protection and Security Act
Date Introduced:	June 29, 2005
Sponsors(s):	Sen. Pryor (AR)
Co-Sponsors(s):	None
Last Action:	June 29, 2005: referred to the Committee on Commerce, Science, and Transportation.
Summary:	Establishes procedures for the protection of consumers from misuse of and unauthorized access to, sensitive personal information contained in private information files maintained by commercial entities engaged in, or affecting, interstate commerce, provide for enforcement of those procedures by the FTC.

Number: S 1408	
Name:	Identity Theft Prevention Act of 2005
Date Introduced:	July 14, 2005
Sponsor(s):	Sen. Smith
Co-Sponsor(s):	6—none from IN
Last Action:	July 28, 2005: referred to committee on Commerce, Science, and Transportation. Ordered to be reported with an amendment in the nature of a substitute favorably
Summary:	Strengthens data protection and safeguards, require data breach notification, and further prevents identity theft.

Number: S 1504	
Name:	Broadband Investment and Consumer Choice Act
Date Introduced:	July 27, 2005
Sponsor(s):	Sen. Ensign (NV)
Co-Sponsor(s):	McCain (AZ)
Last Action:	July 27, 2005: referred to the Committee on Commerce, Science, and Transportation
Summary:	Establishes a market driven telecommunications marketplace, eliminates government managed competition of existing communication service, and provides parity between functionally equivalent services. Caps BLS until 2010; FCC will establish federal quality standards for BLS and states enforce; and penalties for violations of service standards are low and go to the consumer and there are no further remedies available. The FCC will develop rules relating to automatic dialing, telephone solicitation, slamming, cramming, E911, harassing calls, billing disputes, use of CPI, access for persons with disabilities and states can enforce these. There will be one point of contact for compla ints in each state. The FCC will have six months to develop framework on ICC.

Number:	**S 1583**
Name:	Bill to Establish USF Support for Some Broadband
Date Introduced:	July 29, 2005
Sponsor(s):	Sen. Smith (OR)
Co-Sponsor(s):	Dorgan and Pryor
Last Action:	July 29, 2005: referred to Senate Committee on Commerce, Science and Transportation.
Summary:	Will amend TA to expand contribution base for universal service to include intrastate revenues; establish a separate account within the universal service fund to support the deployment of broadband service in unserved areas and to fact based providers only; and defines "broadband service" at 200 kilobits. Only one provider in each underserved area. Funding distribution left to the states at the FCC's discretion.

Number:	**S 1608**
Name:	Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers Beyond Borders Act of 2005
Date Introduced:	July 29, 2005
Sponsor(s):	Sen. Smith (OR)
Co-Sponsor(s):	Inouye (HI), McCain (AZ) and Nelson (FL)
Last Action:	July 29, 2005: referred to Senate Committee on Senate Committee Commerce, Science and Transportation
Summary:	Increases FTC's enforcement abilities by allowing them to better cooperate with foreign counterparts, gather information, redress harms, and participate in international enforcement.

ATTACHMENT 2

Summary of Deregulation Efforts in Other States

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Attachment 2 – Summary of State Deregulation Efforts

As of September 1, 2005

ALABAMA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All ILECs			*Price Caps (1996)*	*Non-indexed Caps*	*Increase 10% per year, (aggregate) Rate Des subject to PSC Rev*	*Increase 10% per year, (aggregate) Rate Des subject to PSC Rev*	*Not Regulated*
SB114	- PSC retains jurisdiction over complaints - Beginning 1/1/08, BLS rate increases limited to CPI increases - PSC has no jurisdiction over broadband services or information services - 12 Months after effective date, PSC has no jurisdiction over new bundles or packages, may continue to reg. existing bundles. - All optional services must be available on a standalone basis, Increase not to exceed 5% per yr per option - PSC retains jurisdiction to prescribe reasonable entry standards	SB 114 Signed into law 5/3/05					

ALASKA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Large Inc (>500K)			Streamlined ROR (1992)				still count in ROR
Small Inc (<500K)			Streamlined ROR (1992)				still count in ROR
HB222	- LEC operating in competitive market is not subject to retail tariff filing; exempt from rate regulation.	Did Not Pass					

ARIZONA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			ROR With Price Caps (2001)	Rate Freeze (x Fact)	Non-indexed Caps	Pricing Flexibility/Rev Cap for Comp Service Basket	Pegged to ROR
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR

ARKANSAS	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC/Alltel			Price Caps (1997)	Caps indexed to 75% of GDPI	Deregulation	Deregulation	Not Regulated
Century Tel			ROR	ROR	ROR	ROR	Regulated
Other Incumbents			Price Caps (1997)	BLS can raise 15% per year or $2 per line monthly	Deregulation	Deregulation	Not Regulated

CALIFORNIA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:	Commission Study initiated						
SBC/VZ/Frontier/Sure west/Citizens			Price Caps (1989/1996)	Rate Freeze w/ productivity factor	Rate Freeze w/ productivity factor	Pricing Flexibility	SBC/VZ Unregulated (Citizens/ Surewest must share earnings
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR

COLORADO	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			Price Caps	Pricing Flexibility			
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR
PUC Dockets 04A-411T & 04 D-440T	- July 2004 - Qwest filed petition seeking deregulation of residential & business lines, bundled & packaged services; would end price and service quality regulation of all of Qwest's retail services	Dockets Open					

CONNECTICUT	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC			Price Caps	Caps indexed to GDPI w/ X factor	Caps indexed to GDPI w/ X factor	Pricing Flexibility	Not Regulated
VZ			Price Caps	BLS Rate Freeze	Pricing Flexibility	Pricing Flexibility	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR
SB 1097	- Almost all retail services deemed competitive and deregulated - Precludes phone company from obtaining waivers from pricing standard 01/012010. - DPUC can investigate/suspend any tariff - DPUC annually reports to the legislature the status of competition and regulation. - Telephone companies cannot obtain a waiver from wholesale service rate floor standard before 01/01/2010	Vetoed 7/11/05					

DELAWARE	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
VZ			Price Caps	Caps indexed to GNPPI - 3%		Pricing Flexibility	Not Regulated

DC	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
VZ			Price Caps	Rate Freeze	May be Inc up to 15% annually	Must be priced above incremental cost	Not Regulated

FLORIDA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Bell South/VZ/SPRINT			Price Caps	Caps indexed to GDPPI-1%	may rise 6% per yr in non-comp markets	may rise 20% per yr in comp markets	Not Regulated
Other Incumbents			Price Caps				
SB1322	- Require local government to treat self same as other providers - Repeal regulation of video programming - Specify jurisdiction of FPSC to reg. telephone companies - Specify certain services are exempt from Commission Jurisdiction. (VoIP, intrastate inter-exchange telecommunications Services., broadband, wireless, CMRS) - Require lifeline assistance procedures - Any local exchange telecom company have to petition commission and justify increase in rates for basic local telecommunications services	SB 1322 Signed into law 6/2/05					

GEORGIA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
BellSouth			Price Caps	Caps indexed to GDPPI	Deregulated	Deregulated	Not Regulated
Other Incumbents			Price Caps				
SB120	- No state agency will impose any requirement on broadband service, VOIP or wireless service - Provision of these services shall be market based	Did Not Pass					
SR298	- Created the Joint House and Senate Emerging Communications Technologies Study Committee - Perform study of emerging technologies like broadband, Wireless, VOIP to determine what role if any the PSC will have - Refers issues to study committee until next year	SR298 signed into law 5/9/05					

HAWAII	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
VZ			ROR	Traditional ROR	Traditional ROR	Traditional ROR	Regulated

IDAHO	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Qwest South			ROR on price Regulated Services/All other services deregulated	ROR for BLS for 5 or less lines w/o comp	Deregulated for all services except BLS accts with 5 or less lines	Deregulated for all services except BLS accts with 5 or less lines	Earnings regulated for price regulated services
Other Incumbents			ROR on price Regulated Services/All other services deregulated	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR
HB224	- Telephone company can elect to have all/part of its services excluded from regulation - PSC still regulates to implement TA 96, determines non-economic regulatory requirements relating to BLS (including service quality, access to carriers, filing of price lists, customer notice, & billing practices) for any telecom service regulated as of 7-1-88. - Any BLS service a LEC opts out of jurisdiction, has a rate increase cap - Sets 3 yr transition period for BLS services that are opted out, PSC may increase period by two yrs to protect public interest	HB224 Signed into law 3/29/05					

ILLINOIS	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC			Price Caps	Rate Freeze	Caps index to GDP-PI	Price Flexibility	Not Regulated
Other Incumbents			ROR	Fully Tarriffed	Fully Tariffed	Fully Tariffed	Fully Tariffed
SB 1700	- Discontinuance or abandonment of price-capped competitive telecommunications service - Provision of advanced telecommunications services by an incumbent local exchange carrier; services packages - Application of service quality rules to telecommunications carriers providing basic local exchange service - No jurisdiction over broadband and advanced services - Classification of telecommunications services as "competitive"	Passed Senate, died in House, Current act extended 2 years by House and Senate					

INDIANA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC			Price Caps	Non-Indexed Caps	Tier 2 services increase limited to 38 cents per y ear	Tier 3 services pricing flexibility	Not Regulated
Verizon			Price Caps	Non-Indexed Caps	Tier 2 services capped; may implement one-time price increase	Tier 3 services pricing flexibility	Not Regulated
SPRINT			Price Caps	Non-Indexed Caps	Tier 2 service increases capped at 8.75% of basket revenue	Tier 3 services pricing flexibility	Not Regulated
Other Incumbents			Flexible Regulation	Ability to Operate out of Regulation	Ability to Operate out of Regulation	Ability to Operate out of Regulation	Ability to Operate out of Regulation
HB1518/SB381	- No jurisdiction over information services or Internet Protocol enabled services - No jurisdiction over advanced or broadband services - After 6/30/07, no jurisdiction over non-basic services - After 6/30/2010, no jurisdiction over basic service - Commission cannot impose service quality regulation or performance standard on any non-basic service; basic service can have such regulation if imposed equally on all providers - If provider raises recurring rates, it shall continue to offer flat monthly rate with unlimited local calling - Commission to eliminate unnecessary regulations biennially; must justify regulation/policy that is retained	Did Not Pass					

IOWA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest, Front,			Price Caps	Caps indexed to GDP-P1	Rates can rise up to 6%	Deregulated	
Other Incumbents			Deregulated				
HB277	- Qwest, Frontier, and Iowa Telecom can choose to end rate regulation by the Iowa Utilities Board except for single line flat rate service; effective July 1, 2005 - Residential single flat rate service rates may be increased by $1 every year beginning 7/1/05 and ending 6/30/08; up to $19 ceiling - If utility raises BLS rate, it must then offer DSL in all of their exchanges within 18 mos of rate increase.	HB277 Signed into law 3/15/05					

KANSAS	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC, SPRINT			Price Caps	Caps indexed to GDP-P1	Caps indexed to GDP-P1	Certain Services deregulated	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	ROR
SB120	- Excludes residential and single-line business from price cap regulation, when combined in a package or bundle - Deregulates any packaged or bundled telecommunications services offered after August 1, 2005 - Price cap regulation for SLB & residential service are based upon the CPI telephone service component - Misc Services Basket price caps, total basket increase cannot exceed 6% annually - Deregulate exchange area of any individual residential service or service category, if at least 1 telecom company is providing basic residential telephone service - Review Kansas Universal Service Fund	Did Not Pass					

KENTUCKY	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Bell South			Price Cap	Rate Freeze	Rate Freeze	Deregulation	Not Regulated
Cincy Bell			Rate Freeze	Rate Freeze		Pricing Flexibility	No Earnings Review
Alltel			Caps	Caps	Pricing Flexibility	Pricing Flexibility	No Earnings Review
Other Incumbents			ROR				

LOUISIANA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Bell South			Price Caps	Non-indexed caps		Deregulated	Not Regulated
Other Incumbents			Price caps	Non-indexed Caps		Pricing Flexibility	Not Regulated

MAINE	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Price Caps	Rate Freeze	Price Flexibility	Price Flexibility	
Other Incumbents			ROR	Fully Tariffed	Fully Tariffed	Fully Tariffed	

MARYLAND	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Verizon			Price Caps	Indexed to GDP-PI	Indexed to GDP-PI	Deregulation	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

MASSACHUSETTS	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Alt Rag Plan	Rate Freeze	Market based price w/ price floors	Market based price w/ price floors	Not Regulated
Other Incumbents			ROR				

MICHIGAN	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC			Price Caps	Caps Indexed to Det area CPI - 1%	Caps Indexed to Det area CPI - 1%	Deregulation	Not Regulated
Verizon			Price Caps	Caps Indexed to Det area CPI - 1%	Caps Indexed to Det area CPI - 1%	Deregulation	Not Regulated
Other Incumbents			Rate Freeze	Local Rate Freeze		Switched Access Charges Deregulated	
PUC Case No. U-14323 and U-14324	- 1/6/05 - PUC ordered that SBC's rates for business service in a certain geographic area (Access Area A) are deregulated for a 1-year trial period ending 1/6/06 - SBC had requested that business & residential rates in certain areas (Access Areas A & B) be deregulated						
HB4600 (Referred to Committee)	- Not regulate the rates, charges, terms, or conditions for, or entry or exit from , the provision of telecommunications service	Pending					
SB528 (Referred to Committee)	- Telecom providers must register with the state - Establishes complaint procedures - 211 and deaf relay requirements - Allows for regulation of pole attachment rates - Slamming and Cramming regulated - Marketing and customer service issues	Pending					

MINNESOTA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Qwest			Price caps	Non-indexed Caps	Price Flexibility	Deregulated	Not Regulated
SPRINT, CIT, Front			Price Caps	Non-indexed caps	Price Flexibility	Deregulated	Not Regulated
Cit Telecom			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	
Other ILECs with 50,000 access lines or less			Price Flex	BLS priced to market	Price Flexibility	Deregulated	Not Regulated
SF1540 HF1639	- Senate: rates & services deregulated; PSC can investigate complaints; require customer notice of rate changes; have rules for disconnection and establish service quality standards. - Basic Service (single line flat rate business or residential) rate increases, for 1st year limited to 50 cents a month, then increase rates up to 50 cents per month in each of next five years - House: almost identical language as Senate except no provisions for rate increases	SB1540 and HF1639 Did Not Leave Committee					

MISSISSIPPI	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Bell South			Price Caps	Rate Freeze	Service rates can increase up to 20% per y ear	Service rates can increase up to 20% per y ear	Not Regulated
Other Incumbents			ROR	Fully Tariffed	Fully Tariffed	Fully Tariffed	

MISSOURI	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SPRINT, SBC, CENTURT TEL			Price caps	Indexed caps to telecom comp of CPI	Can rise 8% annually	Deregulated	Not Regulated
Other Incumbents			ROR	Fully Tariffed	Fully Tariffed	Fully Tariffed	
SB 237	- Packages or bundled service offerings are not subject to price cap or rate of return regulation - Basic local telephone prices froze for 12 mos., increases tied to CPI/GDPI - Services classified as competitive if 2 non-affiliated entities (in addition to the ILEC) are providing basic local service to both business and residential - Maximum annual allowable increase for non-basic telecommunications services for an ILEC is 5%; was 8% - PSC Reviews competitive services every two yrs to determine if the competitive conditions continue to exist	Signed by Gov 7/14/05					

MONTANA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
Qwest			ROR	Pricing Flexibility	Pricing Flexibility	Pricing Flexibility	Earnings still count in ROR
Rural COOP			Not subject to PSC Reg				
Other IO Incumbents			ROR	ROR Regulation	ROR Regulation	ROR Regulation	
HB539	- Clarifies the use of promotional activities by a regulated telecom service provider - Clarifies the definition of regulated telecom service - Clarifies pricing for combining vertical service and primary access lines - Set price floor for bundling	Did Not Pass					

NEBRASKA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All Incumbents			Deregulation	Retail Rates Deregulated	Retail Rates Deregulated	Retail Rates Deregulated	Not Regulated
	- Retail telecom service rates not regulated since 1986, PSC can roll back excessive residential local rate increases in exchanges w/o competition upon Petition by affected ratepayers - Other services: Increases require 10 day notice. - In 2000, PSC set state universal service benchmarks Res-$17.50; Bus-$27.50, & Earnings 12% - Rates below benchmarks and earnings above benchmarks result SUSF reduction - BLS: Rate increase requires 90 day notice - Earnings regulated at 12% benchmark						

NEVADA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SPRINT			Price Caps	Non-indexed Caps	Can increase up to 5% annually, 20% Cumulative	Pricing Flexibility	Not Regulated
SBC			Price Caps	Non-indexed Caps	Services can be priced above cost floor		Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

NEW HAMPSHIRE	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All			ROR				

NEW JERSEY	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Price Caps	Residential Rates Capped, Bus rates deregulated for more than 4 lines	Residential Rates Capped, Bus rates deregulated for more than 4 lines	Deregulated	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

NEW MEXICO	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest, Valor Telecom			Price Caps	Non-indexed Caps	Capped and increases capped	Deregulated	Not Regulated
Other Incumbents less than 50,000 lines			Deregulated	Residential Rate increases subject to review if applies to 2.5% or more of total customers			
HB750 SB672	- Rates for basic residential and business local exchange service will be set in accord with the ILEC's AFOR - Decreases in retail residential & business services, other than bas loc residential & business exchange service, will be effective 3 days after provision to PRC - Increases in retail services, except basic, will be in accordance with AFOR - Repeals cross subsidization of competitive services by non-competitive services section - PRC given responsibility to determine if individual service has effective competition	Did Not Pass					

NEW YORK	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:	Commission Initiated Review						
Verizon			Tariff Regulation	Rate changes must be justified by Verizon	Price Flexibility	Price Flexibility	Earnings can be reviewed
Frontier			Price Caps	Rate Freeze	Indexed Caps	Price Flexibility	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

NORTH CAROLINA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Bell South			Price Caps	Caps indexed to GDP-PI	Service Specific Caps		Not Regulated
Verizon			Price Caps	Caps indexed to GDP-PI	Service Specific Caps		Not Regulated
SPRINT, Carolina			Price Caps	Caps indexed to GDP-PI	Service Specific Caps		Not Regulated
Other Incumbents			Price Caps	Caps indexed to GDP-PI	Service Specific Caps		Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

NORTH DAKOTA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			Price Caps	Non-indexed Caps	Pricing Flexibility	Pricing Flexibility	Not Regulated
North Dakota Telephone			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	
Other Incumbents			Deregulated	Deregulated since 1993	Deregulated since 1993	Deregulated since 1993	Not Regulated
SB 2216	- Monthly price of residential service for telecom companies with over 50,000 subscribers may be increased up to $18 - Investigate all methods and practices of telecom companies. - SQ: The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecom companies providing similar service in the relevant market area. - May de-average local exchange service prices	SB 2216 Signed into law 4/6/05					

OHIO	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC, SPRINT, Century Tel			ARP	Rate Cap	Price Flexibility	Price Flexibility	Not Regulated
Cincy Bell			ARP	Rate Cap	Price Flexibility	Price Flexibility	Not Regulated
Other Incumbents			ROR	ROR	ROR	ROR	
HB218	- Prohibits jurisdiction over advanced services or Internet protocol-enabled service inconsistent with federal law. - Prohibits requirements for the unbundling of network elements, for the resale of telecom services inconsistent with or prohibited by federal law - PUC has jurisdiction over telecom utilities in the State which have an exemption or ARP. PUC may modify if it determines the basis for its ruling is no longer appropriate. - A commission Order cannot be modified after five years. - Nondiscriminatory treatment of service providers where competing and functionally equivalent services are involved - Alternative regulation for small telephone companies providing any public telecom service - Changes ARP option that allows a company to apply to the PUCO for approval of alternative regulation for basic local exchange service	HB218 Signed into law 8/5/05					

OKLAHOMA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:	SCR 74 (2004) recommended Commission study						
SBC			Price Caps	Non-indexed Caps	Non-indexed Caps	Non-indexed Caps	
Other Incumbents			Streamlined ROR	Mo Base Rates cannot increase more than $2.00 per yr		Pricing Flexibility	

OREGON	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			Price Caps	Rate Freeze	Non-indexed caps w/ price floors		Not Regulated
Verizon, Sprint, Century Tel			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	Earnings still count in ROR
Other Incumbent under 50,000 lines			Deregulated	Can Review rates if 10% or 500 rate payers petition for review	Can Review rates if 10% or 500 rate payers petition for review	Can Review rates if 10% or 500 rate payers petition for review	Not Regulated
SB600	- Utility cannot cross-subsidize activities - Commission may establish residential rates at any level to meet USF objective - Commission may exempt in whole or in part from regulation those telecom service where competition exists - Commission may re-regulate services if conditions change - Commission may authorize utilities to file price lists of competitive services - Defines Affiliated Interests	SB600 Signed into law 6/14/05					

PENNSYLVANIA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All Incumbents			Alt Reg	Capped rates		Pricing Flexibility	Not Regulated
HB30 Act 183 of 2004	- Provide residential service rates be based upon duration or distance of call for local exchange service increases - Commission may reclassify service as non- competitive to competitive if conditions change - Establish broadband Outreach and aggregation fund - Provide for VOIP - Financial assistance for school districts - Requirements for Network Modernization Plan and related Bona-fide requests - Prohibits local governments from providing phone service, unless the ILEC will not provide it - LEC may offer and bill to customers one bill bundled package of services containing, non-tariffed, competitive, noncompetitive service, and affiliate charges - Duties retained: audit utility systems relating to affiliates, review and revise QS, AFOR administration, Merger conditions, - Lifeline requirements and notification requirements for various departments to tell qualified people about the program.	HB30 Act 183 Signed into law 11/30/04					

RHODE ISLAND	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Price Caps	Non-indexed Caps	Any price above cost floors	Any price above cost floors	Not Regulated

SOUTH CAROLINA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Bell South			Price Caps	Non-indexed Caps	pricing flexibility but rev cannot increase more than 5% per year	pricing flexibility but rev cannot increase more than 5% per year	Not Regulated
SPRINT, VZ			Price Caps	Caps indexed to CPI	pricing flexibility but rev cannot inc more than 5% per year	pricing flexibility but rev cannot increase more than 5% per year	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	
HB 3080	- Deregulates rates for bundled/packaged services; PSC cannot impose any terms, conditions or rates - If certain conditions met, LEC may elect to have rates, terms and conditions determined under new plan. - Rates for other services cannot discriminate among customers; aggregate increases in rates cannot exceed 5% of aggregate revenues from other services during prior 12-mo. period	HB3080 Signed into law 12/3/04					
HB 3633	- Deregulates rates, service area, facilities, etc.	Did Not Pass					

SOUTH DAKOTA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			Deregulated 2003	Deregulated	Deregulated	Deregulated	Not Regulated
Other Incumbents			Deregulated	Deregulated	Deregulated	Deregulated	

TENNESSEE	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Bell South, Citizens			Price Caps	Caps Indexed to GDPI-PI	Caps Indexed to GDPI-PI	Caps Indexed to GDPI-PI	Not Regulated
Other Incumbents			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	
SB 182/HB593	- Allows promotional incentives - Authorizes price discrimination for retail services if not based on race, religion, or ethnicity - Prohibits TRA from exercising regulatory jurisdiction over retail offerings telecom prod and service bundles - Prohibits TRA from establishing financial reporting requirements differ the FCC Requirements - TRA must issue a statewide service announcement 1x per yr regarding availability of individual and bundled services	SB 182 Signed into law 5/28/05					

TEXAS	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All Incumbents			Price Caps	Non-indexed Caps	Deregulated except no below cost pricing	Deregulated except no below cost pricing	Not Regulated
SB05	- Deregulated company retains ETC obligations - Certain prices capped until certain dates or obligations are met - On 1/1/06, ILEC markets deregulated; PSC can adopt rules & conduct proceedings to determine whether market(s) should remain regulated on 1/1/06 - Defines regulated company, transitioning company and deregulated company and established regulatory requirements for each - After 7/1/07, incumbent may petition for dereg - PSC may adopt rules for re-regulating companies; subject to a market test to determine status of regulation - Consumers can still file complaints - Rules regarding notification of LL/LU to Consumers and requires other state agencies to help increase take rates - Establishes USF - Rules to allow the establishment of an audio newspaper - Wholesale Code of Conduct - Establishes the Commission as the franchising authority for state-issued cable and video franchises	Signed into law 9/7/05 --- Under appeal by TCTA 9/8/05					

UTAH	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Qwest			Price Caps	Indexed caps to GDP-PI	Indexed caps to GDP-PI	Pricing Flexibility	Not Regulated
Other Incumbents w/ less than 30,000 lines			Streamlined ROR				
SB108	- Beginning 5/2/05, incumbent companies may offer services using a price list; grants pricing flexibility that is identical to a competing company's flexibility - Basic local service rates capped - Packaged services: Individual components of a package must be offered individually - SQ: Rules can impose no greater requirements or obligations on any telecom corporation.	SB 108 Signed into law 2/15/05					

VERMONT	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Price Caps	Non-indexed Caps	Non-indexed Caps	Non-indexed Caps	Not Regulated
Other Incumbents			ROR	Fully tariffed ROR	Fully tariffed ROR	Fully tariffed ROR	
HB495	- Allows non-dominant telecom carriers with less than ten percent of subscriber lines (aggregate statewide) to elect AFORs. - Board may modify, reduce, or suspend requirements of non-dominant providers' carriers of telecommunications service. - Basic service prices and increases capped - Authority over service quality standards	HB495 Signed into law 6/21/05					

VIRGINIA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Verizon			Price Caps	Rate Freeze	25% Max Inc	Price Flexibility	Not Regulated
Verizon			Price Caps	Rate Freeze	25% Max Inc	Price Flexibility	Not Regulated
SPRINT			Price Caps	Caps Indexed to GDP-PI	Indexed to GDP-PI	Price Flexibility	Not Regulated
Other Incumbents			Deregulated	Rates are partially deregulated, COOPS deregulated	Rates are partially deregulated, COOPS deregulated	Rates are partially deregulated, COOPS deregulated	

WASHINGTON	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation							
All Incumbents			ROR			Companies can Petition for rate deregulation	

WEST VIRGINIA	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
Verizon			Flexible Regulation	Rate Freeze		Deregulated	Reg suspended
Frontier			Flexible Regulation	Rate Freeze		Company can Request rate Dereg	
Other Incumbent			ROR	Fully Tariffed ROR	Fully Tariffed ROR	Fully Tariffed ROR	

WISCONSIN	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
SBC			Price Caps	Caps Indexed to GDP-PI	Caps Indexed to GDP-PI	Pricing Flexibility	Not Regulated
Verizon			Price Caps	Caps Indexed to GDP-PI	Caps Indexed to GDP-PI	Price Flexibility	Not Regulated
Other Incumbents			Flexible Regulation	ROR, priced based Regulation, deregulated	ROR, priced based Regulation, deregulated	ROR, priced based Regulation, deregulated	
PSC Docket 6720-T1-196	- 11/24/04 - SBC Wisconsin filed petition to suspend Wis. State 196.196(1) for price regulation of residential service in certain areas (Rate Groups A&B)	Docket Open					

WYOMING	Legislative Outline	Status	Rate Regime	Basic Service	Other Non-Competitive	Competitive Service	Earnings
Regulation:							
All Incumbents			Cost Based Pricing Flexibility	Pricing Flexibility with floor	Pricing Flexibility with floor	Pricing Flexibility with floor	Not Regulated